HUNDRED AND FIFTY-FIFTH REPORT

PUBLIC ACCOUNTS COMMITTEE (1982-83)

(SEVENTH LOK SABHA)

CUSTOMS RECEIPTS—NON- LEVY OF CUSTOMS DUTY ON CONFISCATED CAR RELEASED ON REDEMPTION FINE

MINISTRY OF FINANCE
(DEVELOPMENT OF REVENUE)

Presented in Lok Sabha on
Laid in Rajya Sabha on } *29-4-1983*

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NEW DELHI

April, 1983/Vaisakha, 1905 (S)

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Page	Para	Line	For	Read
1	1.3	1	Auditor	Audit
15	1.32	18	taintel	tainted
16	1.37	7	was	as
16	1.37	7	laymen	layman
22	1.50	5	foollows:	follows:
27	1.67	2	secrutiny	scrutiny
27	1.67	2	dispersal	disposal
33	1.75	9	imortation	importation
33	1.76	7	they	the
43	1.104	1 from bottom	Add "Law" after "the"	
54	1.118	12	1971	1972
56	1.122	7	Rs.3972 crores	Rs.39.72 crores
58	1.124	17	Add "that" after "Finance"	

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PART II*

Minutes of sittings of the Public Accounts Committee held on :

14th January, 1983 (AN)

15th January, 1983 (FN)

26th April, 1983 (AN)

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PUBLIC ACCOUNTS COMMITTEE

(1982-83)

CHAIRMAN

Shri Satish Agarwal

MEMBERS

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3. Smt. Vidyavati Chaturvedi
4. Shri C.T. Dhandapani
5. Shri G.L. Dogra
6. Shri Bhiku Ram Jain
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8. Shri Mahavir Prasad
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18. Shri Syed Rehmat Ali
19. Shri B. Satyanarayana Reddy
20. Shri Kalyan Roy
21. Shri Nirmal Chatterjee
22. Shri A.P. Janardhanam

SECRETARIAT

1. Shri T.R. Krishnamachari—*Joint Secretary*
2. Shri K.C. Rastogi—*Chief Financial Committee Office*
3. Shri K.K. Sharma—*Senior Financial Committee Officer*

INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee, do present on their behalf this Hundred & Fifty Fifth Report on Paragraph 1.15 of the Report of the Comptroller and Auditor General of India for the year 1980-81, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes regarding Non-levy of Customs duty on confiscated car released on redemption fine.

2. The Report of the Comptroller and Auditor General of India for the year 1980-81, Union Government (Civil) Revenue/Receipts, Volume I, Indirect Taxes was laid on the Table of the House on 31 March, 1982. The Committee examined the audit paragraph on the subject at their sittings held on 14 January, 1983 (AN) and 15 January 1983 (FN). The Committee considered and finalised the Report at their sitting held on 26 April, 1983. Minutes of these sittings of the Committee form Part II* of the Report.

3. In this Report Committee have dealt with a case of non-levy of customs duty on a confiscated toyota car released by the Customs authorities on payment of redemption fine by the party. The Committee have expressed surprise that while there were various lines of investigations open before the Customs authorities to find out the persons actually associated with the illegal import and forging of the documents relating to the car, no serious efforts were made to trace and bring to book the guilty persons. The Committee have recommended that a thorough investigation should be undertaken into the case by the Directorate of Revenue Intelligence so as to find out who was responsible for the illegal import of the car and for forging the documents and also collusion of officials, if any.

4. The Committee have observed that the opinion given by the Ministry of Law in 1974 that customs duty cannot be demanded from a person other than the actual importer and the liability to duty was on the importer only (which was contradictory to their own views expressed in 1972) was approved at Joint Secretary level only. The Committee have deplored the fact that the opinion of the Ministry of Law which also had a profound adverse impact on revenue and which in no uncertain terms gave a fillip to the smuggling activity was accepted

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by the Ministry of Finance at the level of Member (Customs) only and was not placed for consideration either of the Central Board of Excise and Customs or of the Finance Secretary. The Committee have recommended that the Ministry of Finance should, in consultation with the Ministary of Law reconsider the issue and take appropriate corrective measures in order to protect revenue as also to check illegal imports.

5. After perusal of various cases of adjudications, the Committee have observed that the redemption fine in cases of town seizures was being fixed by the Customs authorities without taking into consideration the element of duty after the advice of the Ministry of Law in 1974. The Committee have recommended that the Central Board of Excise and Customs should immediately issue instructions directing the adjudicating officers to resort to absolute confiscation of prohibited goods save in exceptional cases. Further in all cases where redemption fine is imposed it should be fixed at such a level that the duty factor is taken care of.

6. For reference facility and convenience, the observations and recommendations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form as Appendix to the Report.

7. The Committee place on record their appreciation of the assistance rendered to them in the matter by the Office of the Comptroller and Auditor General of India.

8. The Committee would also like to express their thanks to the Officers of the Ministry of Finance (Department of Revenue) and Ministry of Law for the cooperation extended by them in giving information to the Committee.

NEW DELHI;

April 27, 1983
Vaisakha 7, 1905 (S)

SATISH AGARWAL
Chairman,
Public Accounts Committee.

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REPORT

NON-LEVY OF CUSTOMS DUTY ON CONFISCATED CAR RELEASED ON REDEMPTION FINE

Audit Paragraph

1.1 According to Section 111 of the Customs Act, 1962 goods imported without observing the prescribed procedure and without payment of customs duty are liable to confiscation. The confiscated goods may, however, be released to the owner on payment of such fine as the adjudicating officer thinks fit and this fine is in addition to any duty and charges payable in respect of such goods.

1.2 A Toyota car made in Japan, illegally imported and confiscated, (May 1978) was released (December 1980) on payment of redemption fine of only Rs. 25,000 without charging customs duty which amounted to Rs. 87,500 on the basis of the value of Rs. 50,000 as shown in the seizure report (November 1976). Penalty under Section 112 (b) was also not levied on the person who acquired possession of the car illegally imported into India.

1.3 On this being pointed out by Auditor (October 1980) the Ministry of Finance have stated (December 1981) that the registration documents and other evidence produced by the person from whom the car was seized were, on inquiry, found to be forged or false and the car was, therefore, ordered to be absolutely confiscated. No personal penalty was, however, levied as there was no evidence to establish that the person found in possession had knowledge that the car was smuggled into India. The Ministry have added that customs duty also could not be levied as, according to the interpretation given by the Ministry of Law, in town seizure cases the duty liability rests only on the importer, and an this case neither the manner of the import of the vehicle nor the identity of the actual person who imported it could be established.

[Paragraph No. 1.15 of the Report of the Comptroller & Auditor General of India for the year 1980-81, Union Government (Civil) Revenue Receipts—Volume-I— Indirect Taxes].

History of the case

1.4 Recounting the history of the case, the Chairman, Central Board of Excise and Customs stated during evidence :

> "On 23 of November, 1976, the officers of the Central Excise Collectorate seized a Toyota car bearing registration No. WBG 6397 from Umed Mal Jain of Rajasthan. He produced evidence for bonafide purchase of the vehicle. According to the evidence, the car was allotted to the STC, Calcutta. But subsequently it was sold to Mr. Bihari Lal Agarwal of Calcutta and then to Mr. Jain. A receipt of Rs. 30,000 was purported to have been issued by Mr. Agarwal. A certified copy of the income tax assessment relating to Mr. Umed Mal Jain was also produced. But the fact is that the car was a smuggled one and it was liable to be confiscated because all the entries had been manipulated in the registration book."

1.5 The Committee learnt from Audit that the Deputy Collector of Central Excise Jaipur adjudicated the possession of the car as an offence under the Customs Act on 11 May, 1978 and confiscated the car absolutely. No personal penalty was imposed on Shri Umed Mal Jain under Section 112 of the Customs Act 1962 on the ground that there was no evidence to establish that Mr. Jain had knowledge that the car was smuggled into India. There upon the party went in Appeal and the Appellate Collector, New Delhi upheld the order of confiscation passed by Deputy Collector. However, on 2 January 1980 he ordered that the car be released on payment of a redemption fine of Rs. 25,000, the Appellate Collector did not order levy of either customs duty or penalty.

1.6 The Committee asked whether during the course of investigation, the department could find out who had committed the forgery, the Chairman, Central Board of Excise and Customs stated :

> "The matter was referred to the CBI. Even they could not find out the original person who had committed this forgery."

1.7 When enquired about the documents of sale by the STC to Mr. Bihari Lal and from Mr. Bihari Lal to Mr. Umed Mal Jain, the Additional Secretary (Anti-Smuggling) stated :

"The investigation conducted by the Department revealed that the Motor Vehicles Department did not allot any car by name 'Toyota'."

1.8 The Committee pointed out that whenever the sale of any property takes place, the original documents were to accompany the subsequent sale and all those documents would pass on to the third purchaser because the title goes on passing. Asked whether in the case under examination, should it not have been very natural for Mr. Umed Mal Jain to have asked Mr. Bihari Lal to hand over him the original documents received from the STC, the Chairman, Central Board of Excise and Customs stated :—

"I think, as a precaution, Mr. Umed Mal Jain should have insisted on this. But Mr. Jain was not culpable because he, after seeing the registration book wherein the car was actually registered in the name of the STC and thereafter according to transfer entry, it had been sold to Mr. Bihari Lal and from Mr. Bihari Lal to Mr. Umed Mal Jain through a broker, probably might not have insisted on the original documents. Presumably bonafides were attributed to Mr. Jain on that basis.

1.9 The Committee wanted to know how the documents were found to be forged. The witness stated :—

"When they found that the registration book bore the name of the STC as the first owner and then transferred to Bihari Lal as the second owner, they checked up and found that this registration number was forged. The registration number was WBG 6397. This pertained originally to a car Motor Vehicle Ambassador Mark-II, 1966 model. What they had done was they had taken the registration book of 1966 model Ambassador Mark II which was in the names of one Shri Mahesh Chandra C/o Philips, Calcutta. On that book the manipulation was done. Or, probably having said this book is lost, they started a new book, where the first owner was shown as STC. But when enquiries were made by the authorities, it was revealed that this did not initially belong to STC but to

one Shri Mahesh Chandra of Calcutta. Subsequent enquiries revealed that the document was forged."

1.10 To a question whether a person found to be in possession of a smuggled or stolen property would be aliable for prosecution under Section 411 of the Indian Penal Code, the Joint Secretary, Ministry of Law replied in affirmative.

1.11 Enquired what action was taken by the CBI, the additional Secretary (Anti-Smuggling) stated :—

"They have written a letter to us saying that the available material is not adequate to register the case and so, the complaint is returned."

1.12 The Committee asked whether the Department could trace Mr. Bihari Lal. In reply, the witness stated :—

"There is no person by the name 'Bihari Lal'. The registered letter sent by the Department was sent back with the remarks 'person not known'.

1.13 On the role of the broker, the witness stated :—

"I understand that the penalty was imposed in adjudication. It is proved beyond doubt that Shri Verma was involved in selling the imported car. They have imposed the penalty of Rs. 10,000/- (by the Additional Collector of Customs, Jaipur)."

1.14 Asked whether the penalty was realised, the witness stated :—

"There is no indication on the file."

1.15 In reply to a question of the Committee, the witness stated that no complaint was filed against Mr. Verma.

1.16 The Committee asked whether the Department handed over the case to the Directorate of Revenue Intelligence in order to locate Mr. Bihari Lal and find out whether he could be held responsible for forging the documents. The witness stated :—

"With the investigations, Directorate of Revenue and Intelligence was also associated and that is why the matter was referred to the CBI."

1.17 The Committee desired to know why the Department had not handed over the case to DRI for further investigations to put the broker to some fruitful cross examination, so that the whole facts could have come out. In reply, the Chairman, Central Board of Excise and Customs stated :—

"This case was, in fact, initiated and handled by the DRI and I would agree with you that so far as Verma is concerned, enough evidence has been found to impose a penalty. There is very little for prosecution. The file does not indicate whether any action was started on that but this is the line of enquiry. Very legitimately you have said that even at this stage it could be pursued. If there is no penalty, then prosecution under law may also not arise. But here so far as Verma is concerned, there is a *prima facie* case. I am sorry that we cannot say at this late stage as to why enquiry was not conducted."

1.18 The Committee also pointed out that CBI had returned the papers without carrying out any investigation. Asked whether in view of this and also of the fact that a penalty was imposed on the broker, would it not be possible to find out more facts by launching action against the broker, the witness stated :

"You are right. So, this line of action we will pursue."

1.19 Enquired further whether it was also not possible at the national or international level to trace out the company which manufactured the car and to find out to whom the car was sold for the first time by checking the engine number, chassis number, etc., the witness stated :

"Sir, this line of enquiry was not pursued but this sort of enquiry is possible and I think with a little effort it should have been possible to find out but it was not done."

1.20 When asked whether the Ministry intended to do it now, the witness stated :

"Sir, I think at least in selected one or two cases it will be worthwhile but I do not think we have done it any such case herein before."

1.21 In reply to a question of the Committee, the Chairman, Central Board of Excise and Customs stated that the market value of the 1968 Model Toyota car purchased by Shri Jain in 1972 for Rs. 30,000 was Rs. 50,000.

1.22 Asked whether it could not have been a matter of suspicion for Shri Jain himself that he was getting the car at a cheaper price, the witness stated :—

"That is a relevant point. But we are not sure whether the car was damaged or there were some other defects. At this stage, we cannot say what was the consideration which led Mr. Jain to take the car without any further enquiry."

1.23 When enquired about the antecedents of the purchaser, the witness stated :—

"The income-tax assessment order of the particular date was produced and seen. He is an income-tax assessee definitely and this car was in those accounts. This car was purchased. The Income-tax Department also did not suspect that he had purchased for Rs. 30,000, which is for Rs. 50,000."

1.24 The witness further stated :—

"In the order, there is a reference that according to him, it was not road-worthy and it was got repaired. But there is no information here whether that particular aspect was verified."

1.25 Asked whether the Department had checked up the state of the car etc. when it was seized, the witness stated :

"The facts will be taken into account. We will investigate."

1.26 The Committee asked whether the forgery in the registration number of the car would not have been carried out with the collusion of some people in the Registration Office at Calcutta. The Chairman, Central Board of Excise and Customs stated :

"May or may not be. Because, if it was totally forged, then the registration people may not be in it. This will have to be looked into."

1.27 In this connection, the Committee desired to know whether there was any co-ordination between the Customs Department and the regional transport authorities of the State Governments on the registration of imported cars and whether there was any mechanism to exercise check on cars of foreign origin imported to India unauthorisedly. The Ministry of Finance (Department of Revenue) in their note stated :

"A person bringing an imported car has to get it registered with the local transport authorities who in turn no doubt, look into the documents to ascertain the source of acquisition of the imported car. If they find that the imported car has been genuinely imported into the country after payment of duty, fine, penalty etc. as the case may be, they would allow registration on the basis of such customs documents. In case of doubts ; the matter is referred by them to the concerned customs authorities for clarification.

As regards check on cars of foreign origin imported into India unauthorisedly, whenever any such seizure is effected by Customs authorities, in town, necessary inquiries are with the concerned transport authorities with reference to the registration papers of the car. In this way, necessary co-ordination between the Customs and transport authority in respect of imported cars is maintained.

In several cases, as in the instance cited in the Audit Para, it has been found that the registration books covering imported

cars have been forged or fradulently obtained in the first instance. Based on such forged documents, the imported vehicles were subsequently sold to the other parties."

Chargeability of Customs duty on smuggled goods confiscated in town seizures

1.28 It has been stated in the Audit paragraph that in reply to the audit objection, the Ministry of Finance had maintained that since in town seizure cases the duty liability rests only on the importer, as clarified by the Ministry of Law, in the present case, no duty was leviable on the person from whom the car was seized. Also, according to the Ministry, he was not liable for any personal penalty as there was no evidence to establish that he had knowledge that the car was smuggled into the country. In this context, the Committee desired to know the provisions in the Acts and Rules, on the liability of a person found in possession of an imported item without proof of the same having been imported by him legally and after payment of duty, and it is not known how he came to be in possession. In reply, the Ministry of Finance (Department of Revenue) have stated:

"Section 112 of the Customs Act, 1962 states that any person who in relation to any goods does or omits to do any act which act or omission would render such goods liable to confiscation under section 111 or abets the doing or ommission of such act, or who acquires possession of any goods which he knows or has reason to believe are liable to confiscation under section 111 shall be liable (i) in the case of goods in respect of which any prohibition is in force under the Customs Act or any other law for the time being in force to a penalty not exceeding five times of the value of goods or 1000 rupees whichever is greater and (ii) in the case of dutiable goods other than prohibited goods to a penalty not exceeding five times duty sought to be evaded on such goods or 1000 rupees whichever greater.

Section 111 of the Customs Act gives the various categories of goods which are liable to confiscation. The relevant sub-section of section 111 is sub-section (d) which states that any goods which are imported contrary to any prohibition imposed by or under the Customs Act or any other law for the time being in force shall be liable to confiscation.

Section 3 (1) of the Imports and Exports (Control) Act, 1947 states that the Central Government may, by order published in the official gazette, make provisions for prohibiting, restricting or otherwise controlling in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the import of goods of any specified description. Clause 3 (1) of the Imports (Control) Order 1955 states that save as otherwise provided in the order no person shall import any goods or the description specified in schedule I except under and in accordance with a licence a Customs clearance permit granted by the Central Government or by an officer specified in Schedule II. Schedule I is an exhaustive list of various classes of goods. Section 3 (2) of the Imports and Exports (Control) Act, 1947 provides that all goods to which any order under sub-section (1) applies shall be deemed to be goods of which the import or export has been prohibited under section 11 of Customs Act, 1962, and all the provisions of the Customs Act shall have effect accordingly.

Thus under section 112 of the Customs Act the essential ingredient for the liability of a person to any penalty is any act or omission by him which would render the goods liable to confiscation under the Act or the abetment of the doing or omission of such an act, or the possession by him of goods or his being concerned in carrying, removing, depositing harbouring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111. An offence under section 112 of the Customs Act, 1962 is an offence of strict liability in which mens rea or the knowledge of the implications and consequences of the act or omission is not a relevant consideration. Bare knowledge or consciousness of the act or the omission is enough to attract the operations of Section 112. In this context knowledge means not only what one knows but also what one is reasonably expected to know.

Section 135 (1) also provides for imprisonment and fine apart from imposition of personal penalties under the Act. The section states that without prejudice to any action that may

be taken under the Act if any person is in relation to any goods knowingly concerned in any fradulent evasion or attempted at evasion or any duty chargeable thereon or of any prohibition for the time being imposed under the Customs Act or any law for the time being in force with respect to such goods or acquires possession of or is in any way concerned in carrying, removing, despositing, harbouring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, he shall be punishable in the case of an offence relating to goods to which section 123 of the Act applies and the market price of which exceeds Rs. one lakh with imprisonment upto 7 years and with fine and in any other case with imprisonment upto 3 years or with fine or with both.

Section 123 of the Customs Act places the burden of proof in cases of seizure of certain category of goods that such goods are not smuggled on the person from whom the goods were seized, or on the person who claims to be the owner of such goods. The goods specified in section 123 (and subsequently by Notification in the official Gazette) are gold, diamonds manufacture of gold or diamonds watches, cosmetics, mechanical lighters and flints thereof, playing cards, safety razor blades, cigarettes, transistors and diodes, synthetic yarn and metallic yarn, fabrics made wholly or mainly of synthetic yarn, cassette tape recorders, electronic calculators and whiskey.

In the case of the above goods the market price of wl ich exceeds Rs. 1 lakh if the person from whom the goods are seized, or the person who claims the ownership of the goods, is not able to prove that the goods were licitly imported into the country and after paying the duty leviable thereon such person will be liable to imprisonment extending to 7 years as also a fine.

In the case of goods other than specified above, the burden of proving that the same are smuggled lies on the department. In such cases, it is for the Department to adduce evidence in the nature of statements recorded from various concerned persons, seized documents etc. to prove that the goods had been

illegally imported into the country and without payment of duty. There are no hard and fast methods by which such evidence can be collected and depends on the results of investigation into each case.

As regards payment of duty section 12 (1) states that duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 or any other law for the time being in force on goods imported into India. Section 46 (1) states that importer of any goods shall make entry thereof by presenting to the proper office a bill of entry for home consumption in the prescribed form. Section 47 states that when the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under the Act in respect of the same the proper officer may make an order permitting the clearance of goods for home consumption. The scheme of the act, therefore, provides that the import duty on imported goods shall be paid by the importer. The liability for payment of duty lies only on the importer and not on any other person even if the goods are seized from the letter. This position in law has been confirmed by the Supreme Court in various cases (Sewpukanrai, Indrasanrai Ltd. Vs. Collector of Customs—A.I.R. 1958, S.C. p. 845, Union of India and others Vs. M/S. Security and Finance (P) Ltd.—1976 Supreme Court cases, p. 166). The general principle that in the absence of the charging provision there is no personal liability is also brought out in the case Uran Municipality Vs. Shankarrao, 61 Bombay Law Reporter p. 284."

1.29 The Committee drew attention of the Ministry of Finance to the provisions in Section 12, 21, 46, 47, 48, 111, 125 and 150 of the Customs Act, 1962. Keeping in view these provisions and also the opinion of the Supreme Court as held in the case of Union of India vs. Security and Finance Ltd., (that the liability to duty attaching to goods, released on redemption fine, would not be discharged if the fine is imposed without incorporating therein the quantum of duty payable) the Committee asked whether the Ministry of Finance had examined why duty was not levied by the proper officer on confiscated goods held by the

seizing officer before the seized goods are adjudicated under Section 122. The Ministry of Finance in their note stated :

> "The question suggests that since seized goods are also imported goods, the proper officer should levy import duty on seized goods before the same are adjudicated under section 122 so that the adjudicating officer would be compelled to keep in view the prior claims of Government as to duty before levying a fine in lieu of confiscation under section 125 (1). In support of this argument, the question cites sections 12, 21, 46, 47, 48, 111, 125 and 150 of the Customs Act, 1962.
>
> Section 12 provides that all goods imported into or exported out of India shall be liable to duties of customs at rates specified under the Customs Tariff Act, 1975 or any other law for the time being in force.
>
> Section 21 states that all goods, derelict, jetsam, flotsam and wreck brought or coming into India shall be dealt with as if they were imported into India unless it is shown to the satisfaction of the proper officer that they are entitled to be admitted duty free under the Customs Act.
>
> Thus the section provides for assessment of duty at the point of importation into India and makes the goods covered by the Section liable to pay duty, if any, on such goods in the manner as on regular importation of goods under the Customs Act. As such, the Section does not have a bearing on the issue under reference.
>
> Sections 46 and 47 deal with the procedure regarding goods imported through regular channels. Section 48 prescribes the procedure to be adopted where imported goods are not cleared for home consumption or warehoused or transhipped within two months or where the title to any imported goods is relinquished, and states that the persons having custody thereof may sell such goods. Thus, this Section applies to goods imported through regular and legal channels. Section 111 specifies the various categories of imported goods which are liable to confiscation and section 112 provides for the imposition of penalties for improper importation of goods etc.

Section 150 states that any goods not being confiscated goods which are sold under any provisions of the Customs Act shall, after notice to the owner thereof, be sold by public auction or by tender or with the consent of the owner in any other manner. The Section then stages the manner in which the sale proceeds thereof should be applied. It is important to note that this section applies only to goods other than confiscated goods and that too which are to be sold under any provisions of the Act. The provisions of the Act which provide for the sale of imported goods are Section 48 as explained above as also section 22 regarding the abetment of duty on damaged or deteriorated imported goods. This section states that the value of damaged or deteriorated goods may be ascertained *inter-alia* by being sold by the proper officer by public auction or by tender, or with the consent of the owner in any other manner.

It is thus clear that section 150, read with sections 22 and 48 applies only to goods imported through regular channels and has no application to smuggled goods which are seized/ confiscated.

Thus, when goods are seized under section 110 read with section 111, the next step would be adjudicating the case under section 122 read with section 125. If the adjudicating authority finds that the goods have been legally imported, and that there is no contravention of law, he will release the goods to the person from whom it has been seized. If otherwise, in the case of prohibited goods, he may confiscate the goods absolutely, in which case the title to the goods will vest in Government and the question of liability to duty will not arise. If, however, the adjudicating authority exercises the discretion of releasing imported prohibited goods on a redemption fine to the person from whom it is seized, then in terms of the provision to section 125(1), the fine shall not exceed the market price of the goods less the duty chargeable thereon. As regards duty liability in such cases, as explained in reply to Audit Para No. 1.15 and in reply to Question No. 2 of the first advance questionaire, this can be recovered only from the importer as the law now stands and not from any other persons.

Thus, it would not be possible to apply the provisions of section 150 for the imposition of Customs duties on seized goods before adjudication, since the said section, in the first place, applies only to goods imported through regular channels which are permitted to be sold under the Act and additionally because under the scheme of Act, duty can be recovered only from the importer.

As regards the decision of the Supreme Court in the case of Union of India *Vs.* Security and Finance (P) Ltd. the judgement states that while importation attracts duty which any importer, licit or illicit has to pay, in some cases it may be difficult to get the actual person who imported or was concerned in the offence of importation contrary to the prohibition or restriction clamped down by the law. In such an event, only confiscation, alternatively, fine, may be imposed. The judgement does not state that the liability to duty attaching to goods released on payment of fine would not be discharged if the fine is imposed without incorporating therein the quantum of duty payable."

1.30 During evidence the Chairman, Central Board of Excise and Customs stated :

"Some years ago when an identical case arose in the Bombay Customs House, we were advised that duty cannot be recovered from a second-hand or third-hand owner of the goods. So, therefore, to that extent the duty is recoverable only from the person who has performed the act of import. This difficulty is there. After that particular advice, in this particular case also because the duty was considered under the law not to be recoverable from the person from whom the car was seized, the duty has to that extent remained unrecovered because neither in this case nor in other similar cases would it be possible for the Department to find out in the large majority of cases, in fact, in almost all the cases, by whom a particular act was performed."

1.31 In reply to a question of the Committee the witness stated that the advice was given by the Ministry of Law in 1975.

1.32 The advice of the Ministry of Law referred to above was circulated by the Central Board of Excise and Customs to its field formations *vide* letter F.No. 394/64/75-Cus-III dated 1 December, 1975 which read as follows :

> ".....the question whether customs duty can be charged from a person from whom the goods have been seized, but who claims to have purchased the same from some other person and had not himself smuggled them has been examined by the Government. The various provisions of the Customs Act, 1962 have been examined in this regard in consultation with the Ministry of Law which have advised that the general principle is that in the absence of a charging provision, there is no personal liability (Uran Municipality *Vs.* Shankar Rao, 61 Bomby Law Reporter p. 284). According to them there does not appear to be any provision in law by which the individual who is in possession of goods in respect of which the duty has not been paid becomes personally liable to pay the same, though the good themselves being taintel goods may be liable to be proceeded against and therefore liable to confiscation. It is accordingly, clarified that in town seizure case, payment of duty cannot be demanded from a person other than the importer and that the duty liability is only on the importer."

1.33 Explaining the legal position, the representative of the Ministry of Law stated during evidence :

> "The advice given by us was that there was no charging provision in the Customs Act to provide that a person other than the importer also is liable to pay the customs duty.
>
> So, in the absence of such a provision, you cannot levy the duty on person other than the importer in town seizure cases. If you can identify the importer or if you can establish that this is the person from whom the car has been seized or any other goods have been seized, who is the importer, certainly, the duty is chargeable from him. But, if you cannot identify the importer or if you cannot say that he is the person who has imported this, we cannot levy the customs duty on him."

1.34 The Committee asked whether in a case where a person

smuggles a car into the country and passes it on to a subsequent person and the Customs authorities seize the car from the subsequent person, the Government were only entitled to confiscate the car and not empowered to levy duty and penalty, witness replied in the affirmative.

1.35 The Committee enquired whether Customs duty was leviable on goods or the importer. The representative of the Ministry of Law stated :

"The duty is on goods, the obligation to pay duty is there."

1.36 On being asked whether under the general principle of Law, the obligation to tax had to be discharged by the one who had inhireted the goods, the witness replied : "Yes. That can be done."

1.37 The Committee pointed out that the basic factors to be taken into account for determining the leviability of customs duty were the object and the act of importation, and therefore the liability to duty was always attached to the goods imported. The Chairman, Central Board of Excise and Customs stated during evidence :

> "I must say that the way you have given the exposition of the legal position I was a laymen feel that we can probably think on those lines. I am not a legal expert."

1.38 He further stated :

> "Further, may I invite your attention to Section 36 of the Customs Act where you will also find that some kind of distinction is being contemplated. Duty leviable is in respect of goods but liability is on somebody. The liability of duty is attachable to goods that way but a successor or possessor of these goods, I am not sure, whether in the light of what the representative of Law Ministry has said we can realise the duty from him."

1.39 When the Committee asked out whether duty was not chargeable as soon as it crosses the frontiers of the country irrespective of whether the importer was traceable or not. the witness stated :

> "I entirely agree with your observations. Duty is chargeable on the act of importation of the goods. First of all, there

have to be some goods. There has to be an act of importation. The question is from where it is to be recovered ? Suppose we come across some evidence that Mr. X has imported some goods. But the goods are not traceable. They are consumed ; they have been used ; they have been destroyed. Under the law, Mr. X is still liable to pay regardless of whether the goods are there or not. If he has some other property we will enforce the liability duty on him. Conversely, suppose goods are there but Mr. X is not there. It is in poessession of Y who may otherwise be innocent. The law does not make liability to pay duty fixed on Mr. Y liability to pay duty always remains with Mr. X. The question is whether we can amend the law because we find that the present position is not probably adequate. We can certainly have a second look at it."

1.40 On the question of chargeability of customs duty in the case under examination, the Chairman Central Board of Excise and Customs deposed during evidence :

"So far as the question of charging duty in addition to fine of Rs. 25,000 is concerned, so far as the Board or the Govt. is concerned, there was a definite opinion of the law Ministry. The person from whom the car was seized was not the original importer. As the opinion exists duty was not chargeble from this person. Now whether that opinion is a final opinion, whether that opinion is a correct opinion, that can be a debatable point. We can come to that later. I would submit that I certainly see the force of the points that have been made not by one but by several hon'ble Members here and in my personal opinion this needs to be looked into again from that legal point of view."

1.41 The Committee also drew attention of the Government to Section 125 of the Customs Act, 1962 where there was no reference to the importer, it referred only to confiscation. The Section first referred to fine and then to duty. When asked whether it would not be a misinterpretation to say that only fine was chargeable and not duty, the Chairman, Central Board of Excise and Customs stated :

"I do appreciate the point made which is purely a legalistic point. But it should also be appreciated that there is a

considered opinion of the Law Ministry for the last seven years.....Having regard to the views of the hon. Committee, I think, we will have a second look at it.....We will certainly submit it for reconsideration by the Law Ministry. If so required, we will take it even at a higher level".

Reference made by the Ministry of Finance to the Ministry of Law

1.42 The Committee desired to know the circumstances which prompted the Ministry of Finance to seek the opinion of the Ministry of Law in 1973 on the question of leviability of customs duty on goods seized in town seizures. The Ministry of Finance (Department of Revenue) in their note stated :

"The circumstances in which the opinion of the Ministry of Law was sought on point in 1973, and their opinion obtained in 1974 relate to the seizure of as Mercedez Benz car by Customs authorities at Bombay in June, 1970. The car was seized from one Shri Ishar Singh Chawla who stated that he had bought the same from one Nazar Ahmed Khan of Bombay for Rs. 55,000. It was found that Shri Nazar Ahmed Khan in turn had purchased the vehicles from one Harjap Singh of Punjab. Investigations revealed that Harjap Singh had imported the car temporarily into India without an import licence or payment of duty under the "Carnet de triptyque" procedure on condition of re-export out of India within the prescribed period stipulated in procedure. Shri Harjap Singh had thus disposed of the car in violation of the conditions of temporary import thus rendering the same liable to confiscation. The car was evidently registered for the first time on a false representation made by Shri Harjap Singh to the registration authority at Kapurthala that the previous registration of the vehicle was UMP-7520 and that the R.T.O Bareilly had no objection to the transfer of the vehicle. Accordingly, the registration authority at Kapurthala re-registered the vehicle at Kapurthala on 18-5-70. Enquiries made with the R.T.O. Bareilly revealed that the registration No. UMP. 7520 was actually that of an Ambassador Car belonging to one Shri O.P. Khandelwal.

Shri Harjap Singh who was the original importer of the vehicle was found untraceable although Show Cause Notice were issued

to him in addition to Shri I.S. Chawla from whom the vehicle was seized ; as also to Shri Nazar Ahmed Khan who was the previous owner.

The Collector of Customs (Preventive), Bombay in his adjudication order dated 4-11-1971 confiscated that car under section III (d) of the Customs Act but allowed to be released on payment of a fine of Rs. 50,000 and imposed personal penalty of Rs. 10,000 each on Shri Nazar Ahmed Khan and Shri Harjap Singh. No personal penalty was imposed on Shri I.S. Chawla, extending the benefit of doubt to him. The adjudicating authority also ordered the collection of import duty leviable on the car.

Appeals were filed before the Central Board of Excise and Customs by Shri Nazar Ahmed Khan and Shri Ishar Singh Chawla. The Board in its order dated 20-8-1973 remitted the penalty imposed on Shri Nazar Ahmed Khan but rejected the appeal against imposition of fine filed by Shri I.S. Chawla.

Shri Ishar Singh Chawla then went up in revision application to Government and *inter-alia* made legal submission that since he was not importer of the car he is not liable to pay the import duty leviable thereon. It was on this question, namely, whether import duty could be collected from Shri Chawla from whom the vehicle was seized but was not the actual importer of the car, that the opinion of the Law Ministry was sought. The Law Ministry advised that the general principle is that in the absence of the charging provision, there is no personal liability, there does not appear to be any provision by which the individual who is in possesssion of goods in respect of which duty has not been paid becomes personally liable to Pay the tax though the goods themselves being tainted are liable to be proceeded against in and therefore liable to confiscation".

1.43 The Committee enquired about the revisional authority in this case. The Chairman, Central Board of Excise and Customs stated during evidence :

"It would be the Secretary. The revision application went to the Secretary Ministry of Finance on 5th May, 1973."

1.44 In reply to a question of the Committee the witness stated that the reference to the Law Ministry was made by Under Secretary, who was assisting the Secretary in dealing with the revision application.

1.45 The Committee pointed out that in the case pointed out in the Audit paragraph under examination, the Ministry of Finance had maintained that the Board cannot interefere with quasi-judicial matters. When asked to explain how the Ministry was now taking a different stand and also to indicate the specific reasons for having sought the opinion of the Ministry of Law, the withness stated :

"There was an earlier opinion of the Ministry of Law. The Under Secretary referred to the Law Ministry this particular case, saying that it is not on all fours with the earlier case. Therefore, he referred this case for opinion of the Ministry of Law on the facts of the case."

1.46 Elucidating on the circumstances under which the opinion of the Ministry of Law was elicited earlier, the Ministry of Finance (Department of Revenue) in their note stated :

The circumstance in which a reference was made to the Ministry of Law in 1972 on the question of leviability of customs duty in town seizurs cases on goods seized from a person other than the importer related to the seizure of miscelleneous consumer goods valued at about Rs. 2,820 (cif) by officers of the Madras from Bhoormal Premchand. Shri Bhoormal had stated that he had no documents to cover the goods as these were allowed to passengers by the Customs without fine and duty. In the adjudication proceedings, the goods were confiscated absolutely and a personal penalty of of Rs. 900 was imposed on Shri Bhoormal under the Customs Act. After exhausting the appellate remedy, the petitioner filed revision application before the Government of India who, while upholding the findings of the appellate authority took a lenient view and gave the appellant the option to redeem the confiscated goods on payment of fine of Rs. 2,400. The quantum of personal penalty was also reduced from Rs. 900

to Rs. 100. When the petitioner sought to clear the impugned goods in terms of the order of the revisionary authority, the Customs authorities also demanded duty on the goods apart from the redemption fine. On this point, the petitioner made representation to the Government of India who in turn souhgt the opinion of the Ministry of Law. The Ministry of Law advised that the imposition of fine only validates the import and will have no further effect of absolving the importers from payment of customs duty. This advice of the Law Ministry was in respect of the particular case only.

1.47 The Committee were informed that in the above case, on receipt of the advice of Ministry of Law, the same was communicated to the concrned Collector of Customs (i.e. Madras) to enable him to dispose of the particular case. The said communication (i.e. letter F.N. 13/1322/70-Cus. II (2) dated 7 October, 1972 from the under Secretary, Central Board of Excise and Customs, New Delhi read as under :

"I am directed to refer to your letter No. CB/108/71-RD dated the 8th May, 1972 on the subject mentioned above and to say that the matter has been considered in consultation with the Ministry of Law and their advice is reproduced below :

"Since in lieu of confiscation a fine is imposed, there is no actual confiscation of the goods which would vest title in the Government in respect, thereof and the goods are in the position of being liable to be redeemed by the importer on payment of fine. To such goods there will be a liability to pay Customs duty, in as much as the goods had admittedly been imported into the country by sea. The imposition of fine only validates the import and it will have no further effect of obsolving the importer from payment of Customs Dutty,"

1.48 The Committee desired to know whether the under Secretary had made reference to the Ministry of Law in 1973 at the instance of the Finance Secretary. The Chairman, Central Board of Excise and Customs stated during evidence :

"Before the matter went to the Finance Secretary, the contention of the petitioner was examined. Then the

question arose whether there was duty liability on the petitioner, Mr. Chalwa, or not. So, a raference was made to the Law Ministry on the payment of duty."

1.49 To a pointed question of the Committee as to whether it was not a fact that the Under Secretary had acted without any direction from the Finance Secretary, the witness replied :

"Yes it so seem from the file."

1.50 At the instance of the Committee, the Ministry of Finance (Departmet of Revenue) furnished the relevant File containing the opinion of the Ministry of Law. The events which preceded and ultimately culminated in the Ministry of Law's expressing its view, as it appeared from the file are recounted as foollows :

(i) On 26 November, 1973 the Under Secretary Ministry of Finance (Department of Revenue) made a reference of the Joint Secretary, Ministry of Law explaining the stand taken by Shri Ishar Singh Chawla before the revisional authority and seeking the opinion of the Ministry of Law whether Shri Chawla could be asked to pay duty on the car while taking delivery of the car on payment of fine in lieu of confiscation.

(ii) On 28 December, 1973, the Assistant Legal Adviser Ministry of Law recorded his opinion citing the decisions given by the Supreme Court under the Sea Customs Act, 1978 that in the case referred to for opinion Shri Chawla was not liable to pay duty in addition to fine in lieu of confiscation and marked the file to the Joint Secretary and Legal Adviser.

(iii) On 29 December, 1973, the Joint Secretary, Ministry of Law recorded that he agreed with the views of the Assistant Legal Adviser and marked the file back to the Ministry of Finance.

(iv) On 23 January, 1974 the Under Secretary, Ministry of Finanee submitted the opinion of the Ministry of Law to Member (Customs) recording *inter alia* :

".....I personally however do not agree to the obove opinion of the Law Ministry.....Howeve, since this matter is of considerable importance from the procedural point of view and

the effect of the decision in this case will have recurring effect in so many other cases, Board may like to take a decision on this subject before this particular revision application is put up to F.S. for decision".

(v) As desired by the Member (Customs), the Under Secretary, Ministry of Finance recorded his views on 3 April, 1974 after analysing the case decision of the Supreme Court relied upon by the Ministry of Law in giving their advice. He had recorded that the decisions of the Supreme Court was not germane in the case under examination and proposed that the issue deserved to be referred back to the Ministry of Law or discussed with them for reconsideration.

(vi) On 20 June, 1974 the Joint Secretary Ministry of Law recorded *inter alia* as under :

".....The general principle is that in the absence of a charging provision, there is no personal liability (Uran Municipality V. Shankar Rao, 61 Bombay Law Reporter, p. 284).....There does not appear to be any provision by which the individual who is in possession of goods in respect of which duty has not been paid becomes personally liable to pay the tax, though the goods themselves being tainted goods are liable to be proceeded against in rem and therefore liable to confiscation".

1.51 The issue was further examined at the Ministry of Finance during the period 20 June, 1974 and 29 September, 1975 on 29 September, 1975 it was decided that in view of the opinion given by the Ministry of Law and further examination at the Ministry of Finance in case of town seizures, payment of duty cannot be insisted from a person other than the importer and the duty liability is only on the importer.

1.52 The instructions were ultimately issued by the Ministry of Finance (Department of Revenue) *vide* their F. No. 394/64/75 Cus. III on 18 December, 1975.

1.53 The Committee desired to know the final outcome of the revisionary proceedings in Chawala's case. The Charirman, Central

Board of Excise and Customs stated during evidence :

> "The Revision Petition was dealt with by the Special Secretary. In 1978, after the opinion came in 1974, it was accepted by the Member (Customs).....On 13 February 1978 he passed the order.....the Special Secretary passed an order in 1978 on the basis of the Law Ministry's advice and held that the duty is not recoverable".

1.54 The Committee wanted to know the levels at which opinions given by the Ministry of Law were authorised to be accepted. The witness stated :

> "I must confess that there is no set practice as to at what level opinion given by the Law Ministry should be accepted nor there is requirement that opinion received from the Law Ministry should go up to which level. It was not put up at any higher level than the Member (Customs).

1.55 Asked whether the opinion of the Ministry of Law had been brought to the notice of the Board, the witness replied in the negative.

1.56 The Committee drew attention of the Ministry of Finance to the following Order (11/73) issued by the Additional Collector of Customs on 2 January, 1973 :

> "In a case of sezure of notified goods, the order of confiscation of these goods under Section III (P) Customs Act, 1962 was upheld by the Ministry even at the revision stage but the original order of absolute confiscation was modified and the party was given the option of redeem the goods on payment of a fine in lieu of confiscation.
>
> At the time of exercising the option, the party contended that duty is not leviable. Clarification was sought from the Ministry in this regard. The Board have in consultation with the Ministry of Law clarified that since in lieu of confiscation a fine is imposed, there is no actual confiscation of goods which would vest title in the Government in respect thereof and the goods are in the position of being liable to be redeemed by the importer on payment of fine. In respect of such goods, there will be a liability to pay customs duty also in as much as the goods had admittedly been imported into the country.

The imposition of fine only validates the import and it will have no further effect of absolving the importer from payment of customs duty. In such cases, even if the order confiscating goods and allowing them on a redemption fine does not indicate that duty is chargeable, it will be necessary to collect duty in addition to the redemption fine.

(Authority : Board's letter No. F. 13/1322/70-CUS. II. (2) dated 7-10-1972)

1.57 Asked how one Member can over-ride the decision of the full Board without placing the matter before the Board, the Chairman, Central Board of Excise and Customs stated :

"In this particular case I am not sure whether earlier instructions had gone to the Board. Even the individual members, when they function, they only are exercising the delegated authority of the Board. When Member (Customs) functions, he functions as the Board. Therefore, to say that this is an order of the Board, it does not mean that the full Board has met and issued the order.

The witness further stated :

"I am told, the earlier order of 1972 did not go even to the Member of the Board."

1.58 On being asked whether the advice of the Ministry of Law given in 1974 which had wide-ranging effect on revenue should not have gone to the Board, the witness stated :

"In a case like this it should have gone to the Board."

The witness further stated :

"As far as this specific case in concerned, I have no difficulty in agreeing with you straightaway that this case should have gone to a higher level and considered properly."

1.59 The Committee asked whether it should not be a rule that any new decision taken on the basis of a fresh advice given by the

Ministry of Law and which was against the existing practice and detrimental to revenues, should necessarily get the approval of the Minister. The Chairman, Central Board of Excise and Customs stated :

"That would be a healthy practice."

1.60 The witness, however, added :

"Not in all cases. I would cite an instance. The question before us is whether this should be classified as a stationery item or this should be classified as an article made of aluminium. There may be a difference in duty. This is an issue which has essentially to be determined by a quasi-judicial authority, firstly in the field and later on in the appeals and revisions by other authorities. Suppose we make a reference at some level because the Collector has said "Please let me know whether we call it an article of aluminium." These are the pros and cons. We do feel that a reference could be made to the Department of Law. If the Department of Law says something, that can be passed on to the Collector in a routine manner. It is for him to apply his mind in the light of this. It is not binding on him. In the light of the advice the Collector has to come to the conclusion in his own discretion."

1.61 The Committee pointed out that the Central Board of Excise and Customs had been convening Tariff Conferences even for resolving minor conflicts over classification of committees. Asked how the Board could not have held a Tariff Conference for discussing such a vital issue as the one under examination, the witness stated :

"This is a particular case where even impliedly we had to consider probably the possibility of the Law being amended. It certainly shou'd have gone up, in my personal opinion."

Opinion of the Ministry of Law

1.62 The Committee asked whether there was any case law on the basis of which the advice was given by the Ministry of Law. The representative of the Ministry of Law stated :

"There is no case law on the interpretation of this after the Customs Act 1962 was adopted. But under the Sea Customs

Act there are cases whether it has been held that the person other than the importer cannot be asked to pay the duty..... under the Customs Act, 1962, there is no Supreme Court decision. This is under the Sea Customs Act."

1.63 Asked why amendment to the Customs Act was not suggested so as to remove the laccuna in Law, the representative of the Ministry of Law stated :

"By amendment of the law it is possible.....it has not been suggested.....we have not been asked."

The withess further stated :

....."the opinion given in 1975 was by the then Joint Secretary who became Law Secretary. Now if the Committee would like to have a further opinion, we will do that."

1.64 The Committee asked whether the opinion given by the Ministry of Law in 1975 did not amount to giving a premium on clandestine activities apart from loss of revenue. In reply, the representative of the Ministry of Law stated :

"In a way it will."

1.65 On being asked whether the opinion had the approval of the Law Secretary, the witness stated :

"I do not think it has been seen by the Law Secretary".

1.66 When asked whether the matter was referred to the Attorney General, the witness stated :

"Not so far."

1.67 In this connection, the Committee desired to know the system prevailing in the Ministry of Law with regard to the secrutiny of reference received and their dispersal. Asked at what levels reference were made by the Ministries concerned, the witness stated :

"A reference may come from the Under Secretary level. But if it relates to the Audit Para, it has to be shown to the Joint

Secretary. Who refers is not material. If it involves huge financial stakes, estate or policy matter, Joint Secretary will have to be consulted, who in turn, will consider whether Secretary has to be kept informed.

1.68 On being asked whether the Ministry of the Law Secretary should not have been consulted before giving advice in 1974 on the reference made by the Ministry of Finance on the leviability of customs duty it town seizure cases, particularly when the advice was against the prevailing practice as also detrimental to the exchequrer, the witness deposed :

"It is a fit case. The Law Secretary should have been consulted."

1.69 The Committee wanted to know whether the opinions given by the Ministry of Law were binding on the departments concerned. The representative of the Ministry of Law stated :

"Normally they are supposed to be binding on the Department."

1.70 Asked what was the procedure, if the Department/Ministry concerned did not accept the opinion of the Ministry of Law, the witness stated :

"They can ask for re-consideration of the opinion."

Practice in the Department on chargeability of duty in town seizures prior to 1975.

1.71 The Committee desired to know about the practice that was being followed in different Collectorate with regard to chargeability of customs duty in various collectorates in town seizure cases. The Member (Customs) stated :

"...Before that we were charging duty...I think everywhere they were charging duty."

1.72 In a further note, the Ministry of Finance (Department of Revenue) stated :

"In town seizure cases, where goods seized were released on redemption fine upon adjudication and where neither the

manner of import of the goods nor the actual importer could be ascertained, the general practice followed upto 1975 (including the period before 1972) was that the import duty leviable on the goods used to be collected in addition to the quantum of redemption fine.

However, after Ministry's instructions No. 394/34/75-CUS. III dated 18.12.1975 issued in consultation with the Ministry of Law, in such cases the import duty leviable is not being collected."

Duty foregone in town seizures after 1975 instructions

1.73 The Committee desired to know the approximate amount of duty foregone in town seizures owing to the failure on the part of the Customs authorities to locate the actual importer and as a result of the advice given by the Ministry of law in 1975 during the last five years. The Ministry of Finance (Department of Revenue) in their note stated as follows :

"The various Collectorates of the Customs were addressed to furnish an estimate of duty foregone in the adjudication of town seizure cases where goods were released to the persons from whom seized on redemption fine only. The Collectors have replied that it is not practicable to arrive at such estimates in town seizure cases since at the time of seizure only the market value of the goods could be ascertained, and the cif value of such goods could not be ascertained. For determining the cif value, the time and place of importation and the manner of import are relevant. In towns seizure cases, where these elements cannot always be determined, it is not possible to ascertain the cif value and consequently the duty chargeable on such goods. It is also likely that the in many such cases the duty leviable would have been paid by the original importer as in the case of baggage items imported in excess of the duty free limits prescribed under the Baggage Rules. Even such goods are liable to seizure if the passenger who imported the same subsequently sold the goods to a third party since goods imported as part of baggage are meant for the bonafide personal use of the passenger or are to be given as gifts. In cases of such seizures in town, the goods can be

released on redemption fine only. The Collectors have stated that it is not possible in such instances to ascertain whether the duty was originally paid, or even if not paid the extent of duty chargeable on such goods. It is, therefore, not feasible to make an estimate of the duty foregone in town seizure cases where goods were released on redemption fine."

1.74 In a further note furnished after evidence, the Ministry of Finance (Department of Revenue) stated as under :

"However, to arrive at an estimate of the magnitude of the possible loss of duty in such cases, a sample survey was conducted of some selected units to find out (a) the value of goods in respect of which adjudication orders were passed during 1982 and (b) out of these cases, the value of goods in respect of which option of redemption fine was given by the adjudicating authorities. The units where the survey was conducted were selected on the following considerations :

(i) large metropolitan cities which are not only vulnerable to direct smuggling, but also where baggage imports are of the significant value. The units convered under this category were Bombay, Madras, Calcutta ;

(ii) large towns which are close to a land customs border or a seacoast, and which offer a sizeable consumer market for smuggled goods. The units selected under this category were Surat, Ahmedabad, and Muzzaffarpur ;

(iii) Important regions prone to direct smuggling of goods. Under this category, the units selected were Bulsar, Naxalbari and Siliguri.

Apart from the conducting an overall statistical survey relating to adjudications in these units, the relevant case files were also examined.

A chart showing unit-wise details of value of goods covered by adjudication cases, during 1982, and the value of goods ordered to be released for home consumption on payment of redemption fine in such adjudication cases, is annexed. As

can be seen from the chart out of the total value of goods amounting to Rs. 2133 lakhs which were subjected to adjudication during 1982, goods valued at about Rs. 29.39 lakhs were ordered to be released on payment of redemption fines. This amounts to only about 1.4% of the total value of the goods adjudicated; Nearly 99% of all adjudication orders were for absolute confiscation of the goods. The study revealed that generally, where goods were allowed to be redeemed on payment of fine, these were cases where (a) there was a technical violation of the provisions of Chapter IVA or IVB of the Customs Act, 1962, relating to transport, storeage, sale etc. of goods notified/specified under these Chapters, (b) where the goods imported as baggage were offered for sale or found to have been sold in contravention of the conditions relating to their importation and (c) where vehicles and vessels were used in the transportation of smuggled goods.

It was also noticed that in most of the cases falling under the categories (a) and (b) above, either the evidence was produced of the duty-paid nature of the goods or the goods were such that the Department was not in a position so rebut the arguments that the goods were imported under the duty free allowance under the Baggage Rules. In cases where the department was in a position to prove that the goods were not duty-paid, appropriate duty was demanded where the goods were released on redemption fine. The study also revealed that whenever some clause was available during investigations towards locating the actual importer of the goods, effort to the extent possible were made towards this end.

The units covered in the study were located in regions quite vulnerable to smuggling, and together accounted for seizures valued at about Rs. 30.95 crores out of the all India seizure figures of Rs. 65.89 crores during 1982, *i.e.* about 47%. The study therefore, could be considered as being representative of the position in the entire country. As mentioned above, only about 1.4% of the total value of the goods adjudicated were ordered to be released on redemption fine. Even out of this small proportion, a part of the cases adjudicated related to near technical violation of the law and in

respect of many others, appropriate duty was demanded. The cases where the duty leviable on the goods could not be collected would, therefore, be few, and the loss of duty consequently minimal."

1982

Name of formation	Value of goods involved in adjudications (In Rs. '000')	Home consumption value of goods offered to be released on redemption fine (In Rs. '000').	Percentage of Column 3 to Column 2
1	2	3	4
1. (a) Bombay R & I Wing	121226	791	0.8
(b) Bombay M & P Wing	43001	661	1.5
2. Madras Custom House	7222	841	11.7
3. Ahmedabad Custom Divn.	1792	234	13.1
4. Valsad Division	8079	30	0.4
5. Surat Division	964	80	8.3
6. (a) Calcutta Custom House	17896	265	1.5
(b) West Bengal Collectorate. Hqrs. and Calcutta Custom Division (P & D Unit and Barast Division)	2344	34	1.4
7. Siliguri Division	5078	Nil	Nil
8. Naxalbari Division	1923	Nil	Nil
9. Muzaffarpur Division	3852	Nil	Nil
Total :	213317	2939	1.4%

Option for Redemption of Confiscated Goods

1.75 It is seen that in the case under examination, the Appellate Collector ordered release of the confiscated car on payment of the redemption fine. In this connection the Committee desired to know the provisions in the Act on such options being given to the owners of the confiscated goods. The Ministry of Finance (Department of Revenue) in their noted stated as under :

> "Section 125 (1) of the Customs Act states that whenever confiscation of goods is authorised under the Act, the adjudicating officer may, in the case of goods the imortation of which is prohibited under the Act or under any other law for the time being in force and shall in the case of any other goods give to the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit. The proviso to section 125 (1) states that such fine shall not exceed the market price of goods confiscated, less in the case of imported goods the duty chargeable thereon."

1.76 The Committee enquired whether giving of option under Section 125 as of right did not make the Import Control Act illusory from the point of view of Government and if this matter has been examined by the Board. In reply, the Ministry of Finance stated :

> "The condition preceding the offer of option to pay fine in lieu of confiscation is the confiscation of the goods themselves. Thus, they acts of confiscation and the subsequent release of the goods to the owners on redemption fine at the discretion of the adjudicating officer in the case of prohibited goods is in the form of penal action on the goods for violating the prohibitions placed under the Customs Act or any other law for the time being in force which includes the Import and Export (Control) Act, 1947. It would, therefore, not be correct to state that the option under section 125 to redeem the goods on payment of ine in lieu of confiscation renders the Import and Export (Control), Act, 1947 illusory."

1.77 On being asked whether any action was taken to safeguard interest of revenue by issue of guidelines to specify cases where option should not be given, the Ministry stated :

"No guidelines have been issued by the Department as to the cases where the option of redemption should not be given to the owners of the goods by the adjudicating officer. This is because section 125 (1) specifically leaves this decision (in the case of prohibited goods) to the adjudicating officer and executive instructions cannot override the statutory provisions. Moreover, the offer of option to pay in lieu of confiscation is in the nature of penal action for violation of prohibitions imposed under the Customs Act or other laws for the time being in force, whereas the liability to duty on the imported goods is a distinct aspect."

1.78 The Committee wanted to know whether the Board had considered the implications of the term confiscation in relation to the goods and in relating to the possessor. Moreover, if confiscation was for breaking a prohibition, what was the rationale for limiting penalty to market value and giving possessor in all cases an option to redeem at a fraction of market value. In reply, the Ministry stated :

"Section 111 of the Customs Act specifies the various categories of imported goods which are liable to confiscation. Section 111 (d) which is relevant states that any goods which are imported or attempted to be imported contrary to any prohibition imposed by or under the Customs Act or any other law for the time being in force shall be liable to confiscation. Under Section 125, the adjudicating officer may, in the case of any goods the importation of which is prohibited, give to the owner an option to pay fine in lieu of confiscation, and the upper limit of such fine is the market value of the goods less the import duty chargeable thereon. Thus, in such cases, it is not incumbent on the adjudicating officer to give the offer of redemption. It is for the adjudicating officer to weigh the gravity of the offence in each case, and to decide whether or not to give the offer of redemption. Moreover, the adjudicating officer when giving the offer of redemption can impose a fine upto the market value of the goods less the import duty leviable thereon. This limit upto which the redemption fine can be imposed is sufficiently high and will also nullify the margin of profit on such goods. As regards personal penalty upto five times the market value of prohibited goods."

1.79 The Committee asked whether it was not a fact that in the

present case, the item was completely prohibited for importation. In reply, the Chairman, Central Board of Excise and Customs stated during evidence :

"That is true. The option lies with the Department."

1.80 Asked why no guidelines were issued from the Board that no such option should be offered to the claimants in such cases, the Member (Customs) stated :

"The law says like this. These are quasi-judical authorities operating in the field. The instructions of the Board cannot be taken as having overriding authority. Section 125 says ; "Whenever confiscation of goods is authorised by the Act, the officer may give the option to him." That means he may or may not give the option. In the case of confiscated goods he may in or may not. In the case of prohibited goods the law does not say he should do it. But instead of deperding on the Board's instructions even though the law gives him the option he may or may not do. In the case of the prohibited goods, what I am coming to, is, that this is an enabling provision in the law. That is clear. How to exercise the prowers, when to exercise the powers, it is a different thing."

1.81 The witness further stated :

"There are guideline about items like gold or watches. We have clearly told them not to give the option. There are various entry points and we keep a watch."

1.82 He added :

"In respect of smuggled gold and watches, because they are commonly smuggled items, our idea is that they should not go in the market and the instructions are very clear with regard to these. I will still not say that everybody is bound to follow those instructions. Even in respect of some of the other goods like arms and ammunitions, narcotics, etc., there also the instructions are very clear. I will cite a personal experience. When I took over a Collector of Customs in 1967, there were about 300 cars-some lying in the customs house, some lying outside on the road rotting for two-three years. There were

> some court cases, appeals, etc. We decided to hire some sort of a shed to keep the case there.....I put this only as an illustration of the problems that would arise if you do not give the options to redeem goods. If you give proper fine, there are imported cars, commercial vehicles, boats, in all these things. But, to keep them in order they have to be run."

1.83 On being asked whether it was proper for the Appellate Collector to have given the option in this case, the witness stated :

> "I would only say that the fine should have been higher. I submit that the law does not gives the authority that we can vary what the Parliament has enacted, vary the fine. I do not think that I have the authority to tell him that "you shall not give the option. "When the Act says he may or may not give the option."

1.84 The Committee asked whether the Board were aware that there were countries who destroyed smuggled goods to avoid injury to their indigenous economy. the Ministry stated :

> Thoug no information is available of the practice in other countries where smuggled goods are destroyed to avoid injury to their indigenous economy, the question of destroying such goods was examined by Government in 1977. However, the proposal was not found acceptable on various considerations."

1.85 The Committee also desired to know whether customs authorities record the reasons for having granted the option for redeeming the goods in lieu of confiscation. The Chairman, Central Board of Excise and Customs stated during evidence :

> "No. In certain cases it is obligatory to give option where the goods are not prohibited. In cases where the goods are goods prohibited, why he does not give-the reasons he does not record."

Fixation of Redemption Fine on Goods Released after Confiscation

1.86 It is seen from the Audit Paragraph that the Toyota car illegally imported and confiscated was released by the Customs authorities after imposition of a redemption fine of only Rs. 25,000 without charging

customs duty amounting to Rs. 87,500 on the basis of the value of Rs. 50,000 as shown in the seizure report. In this context, the Committee desired to know the minimum and maximum amount of redemption fine that can be levied under the Customs Act 1962 in such cases. The Ministry of Finance (Department of Revenue) in their note stated :

> "Under Section 125 (1) of the Customs Act, 1962, the maximum fine in lieu of confiscation which can be imposed by the adjudicatng officer in the case of any goods the importation of which is prohibited is the market price of the goods confiscated less the import duty chargeable thereon. There is no minimum fine precribed under the section. The quantum of fine, subject to the above prescribed maximum, is at the discretion of the adjudicating officer, who decide on the amount according to the gravity of the offence of each case."

1.87 Asked whether such a fine was related to the market value, the Ministry stated :

> "Section 2 (30) defines market price in relation to any goods as being the wholesale price of the goods in the ordinary course of trade in India. Thus at the time of seizure the market price of the goods is determined by making necessary market enquiries of the wholesale price of such goods in India."

1.88 When enquired about the rationale for imposition of the redemption fine, the Ministry stated :

> "The rationale of the redemption fine which can be imposed under section 125 (1) is as a penal imposition on goods imported in violation of the prohibition imposed under the Customs Act or under any other law for the time being in force. For instance. under the Imports and Exports (Control) Act, 1947, *vide* Section 3 (1), it is provided that the Central Government may by order published in the official Gazette make provisions prohibiting, restricting or otherwise controlling the import of goods of any specified description. The Import (Control) Order, 1955 states in clause 3 (1) that no persons shall import any goods specified in schedule I thereto except under a licence or customs clearance permit

granted by the Central Government. Schedule 1 is an exhaustive list of goods the import of which requires import licence/Customs clearance permit."

1.89 The Ministry further stated :

"The redemption fine, as mentioned above, is imposed for the unauthorised import of goods and is not essentially intended as means of recovery of duty on the vaule of goods seized.

As regards liability to duty on imported goods section 12 (1) provides that duties of customs shall be levied at such rates has been specified under the Customs Tariff Act, 1975 or any other law for the time being in force on goods imported into India. Section 46 states that the importer or any goods shall make entry thereof by presenting to the proper officer a bill of entry for home consumption. Section 47 states that where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty assessed thereon and any charges payable under the Act in respect of the goods, the proper officer may make an order permitting clearance of the goods for home consumption. Thus, under the scheme of the Act, the liability of goods to import duty is on the act of importation and is to be paid by importer.

In case involving town seizures, if the goods are released on redemption fine to the persons from whom the goods are seized, import duty can be collected from such person only if it is proved that such person was the importer himself. In case, such person is not the importer, but the person who actually imported the goods can be traced, the import duty leviable on the goods can be recovered from the latter. However, where the actual importer is untraceable, under the Customs Act as it stands now, import duty on goods released on redemption fine cannot be recovered from any other person."

1.90 In reply to a question of the Committee whether the redemption fine would not amount to purchase of an ITC order for importing a prohibited item at a percentage of the market value of the item and creating a big loophole in the Import Trade Control Policy under

the Import Control Act with a low deterrent effect, Ministry of Finance (Department of Revenue) stated :

> "The imposition of a redemption fine ensures that the persons from whom the goods were seized and to whom the offer of redemption is made is not allowed any margin of profit, if he sells the goods again. The imposition of such fine, therefore, has a sufficient deterrent effect and cannot be deemed to be purchase of an ITC licence for import of a prohibited item."

1.91 During evidence the Committee drew attention of the Ministry of Finance to the instructions of Central Board of Revenue issued in the year 1930 *vide* C.B.R. letter No. R. Dis 649-CE/29 dated 4 January 1930 and letter No. R. Dis Ex. 833-Cus III/36 dated 7 December, 1936 contained in compilation of rulings on Sea Customs Act, 1878. wherein it was *inter-alia* ruled that "the redemption penalty provides the only device for recovering duty and ordinarily should be so fixed as to be at least equal in amount to the duty." Asked whether it was not a fact that the Department had been acting upon that ruling over the years, the Chairman, Central Board of Excise and Customs stated :—

> "On that, there is no dispute. This is what should be done. It should not be so fixed arbitrarily at a lower level. In fixing the redemption fine, we should put these goods at least in the same position as legally imported goods."

1.92 The witness further stated :

> "I would not be able to readily quote them. Although these instructions are 1930 instructions, they are still a valid. No body will keep the fine at such a low figure that it will not cover the duty amount. Probably the Appellate Collector gave this option that the duty will be paid in addition. This question went to the CBI also."

1.93 On being asked whether in the present case, the duty element had been taken into consideration, the witness stated :—

> "To my understanding, no."

1.94 The witness further states :

> "I am not saying that Board has no responsibility. There are instructions relating to various issues. Here my understanding is that in fixing redemption fine, all relevant factors including liability of duty should be taken into account and it should be fixed at an appropriate level accordingly. In this particular case—to the extent to which the Collector is directly subordinate to the Board is supposed to carry out the instructions but when he acts in his quasi judicial capacity then it cannot be said that instructions are totally binding on him. He has to use his judicial discretion. When the party went in for appeal, the Appellate Collector gave the option for payment of line of Rs. 25,000-which is low. It is a quasi judicial judgement and no amount of instructions would take care of individual cases, because instructions cannot be that binding as to inhibit quasi judicial discretion. There are not many cases."

1.95 When asked whether it was brought to the notice of the Board that the redemption fine was very low, the Member (Customs) stated :—

> "....the fine is inadequate compared to the duty, that is a different matter."

1.96 During evidence the Committee drew attention of the Ministry of Finance to certain cases of town seizures brought to the notice of the Committee by Audit in respect of Ahmedabad Collectorate wherein the amounts of redemption fine levied by the department were quite inadequate. For example, a radio casette recorder, Sanyo made in Japan valuing Rs. 2,100 was adjudicated and released on 3 July, 1979 by the Asstt. Collector, Customs, Bhavanagar after levying a redemption fine of Rs. 500 only. When asked to state the approximate amount of duty that would have been collected in the normal course for the radio cassette recorder, the Chairman, Central Board of Excise and Customs stated :—

> "If it has been seizured from town and only a confiscation fine of Rs. 500 has been imposed, then it would be a wrong decision, not a proper decision."

1.97 The witness further stated :

> "I have a provision to give here. There can be a seizure from town for a very minor infraction of the law. There are notified goods. They have paid duty. They are legally imported. But if the person fails to enter into his account or fails to provide a transport voucher or something like that, then technically it is an offence and the goods are liable to confiscation. It does not mean that the duty has to be recovered because the goods are otherwise *bona fied*..."

1.98 On being pointed out that in the case (quoted above) the redemption fine was reported to have been imposed keeping in view the duty amount which impliedly meant that duty was not paid, the Chairman, Central Board of Excise and Customs stated :

> "Even under the present opinion of the Law Ministry, if the importer is available, the duty can be recovered. In this particular case I am not sure of the facts."

1.99 The Committee also drew attention of the Ministry of Finance to certain other cases of town seizures pertaining to Ahmedabad Collectorate where the confiscated goods were released after imposing negligible amount of redemption fine *e g*. radio tape valued Rs. 2,000 and Rs. 1,630 were released after imposing redemption fine of Rs. 100 and Rs. 50 only respectively, watches, calculators etc. valued Rs. 4,075 released for Rs. 50 etc. It was also pointed out that in many cases the adjudicating officers had recorded that duty was not being levied keeping in view the instructions issued by the Board on 18 December, 1975. The Chairman, Central Board of Excise and Customs stated :

> "If the position there is that they were dealing with smuggled goods on which duty has not been paid but only the fine of Rs. 500 or Rs. 100, these are cases which would cause us serious concern because the Law Ministry's opinion today, firstly, does not debar duty being recovered from the original importer and, secondly even if the duty cannot be recovered, there is no reason why the confiscation fine should not take into account the fact that the duty would not be recoveable and, therefore, the confiscation fine should be fixed at a level which would take care of this."

1.100 The witness added :

> "There must be an explanation for this. I hope at least there will be an explanation but if the facts are as they are, it disturbs me more and the Department.
>
> I would submit goods worth Rs. 10,000 may be seized in the town and the fine is only Rs. 5. It is only a technical offence that he does not make an entry in the book. Now the seriousness of the offence may indicate only an imposition of a fine of Rs. 10. If you see it juxtaposed to the value of the goods, it does look funny. That is why I am hoping I will be able to give an explanation in this case. If there is no explanation, these cases are serious and we have got to do something."

1.101 At the instance of the Committee, a list of adjudications in town seizure cases where the seized goods were released on redemption fine pertaining to Customs/Central Excise Collectorates of Ahmedabad, Calcutta, Shillong and Delhi was furnished by Audit on 22 January, 1981. When asked to indicate the position of realisation of customs duty and the amounts of duty foregone in those cases, the Ministry of Finance (Deptt. of Revenue) in their note stated :

> "All these cases cited by Audit related to adjudications, where the seized goods were released on redemption fine.
>
> A perusal of the cases revealed that in the majority of the adjudications the amount of redemption fine fixed was quite low in comparison with the seizure value of the goods. These lists have been forwarded to the respective Collectors concerned to examine them and to issue general directions to the officers under their charge to ensure that at the time of adjudications for clearance of goods on imposition of redemption fine, at least the amount of duty is safeguarded. Copies of d.o. letter addressed to these Collectors have also been endorsed to all the other Collectors of Customs and Central Excise to follow the interim instructions contained therein until further action is taken by this Ministry in consultation with the Ministry of Law on the question of suitably amending the Customs Act to overcome the lacuna pointed out by the P.A.C. in Audit Para No. 1.15".

1.102 The Committee asked whether the Ministry of Finance now propose to amend the Customs Act, 1962 in order to incorporate a provision for charging duty from the person who is found to be in possession of the illegally imported goods, the Chairman, Central Board of Excise and Customs stated :

> "In my opinion—this is my personal opinion—we will have to consider this."

1.103 On being asked whether the Goverment also propose to increase the amount of redemption fine on release of confiscated goods so as to cover the value of the goods and the amount of duty and also resort to absolute confiscation in certain cases, pending amendment of the Customs Act, the Chairman, Central Board of Excise and Customs replied in the affirmative.

1.104 Explaining the options before the Government, the witness further stated :

> "So far as Government is concerned, a simpler method would be not to give option for redemption where he is not entitled. That is—not to exercise liberally the releasing of the goods by redemption fine where the option does not vest in the customer and where it vests in the customer and he has an opinion to exercise, then in that case, the redemption fine should be adequate. This may be done by administrative instructions. Then this question needs to be further examined. The opinion of the Law Ministry has not come to us at the highest level. It needs a second look. If on a second look, the legal position comes out different from what has been prior to 1975, the position prior to 1975 gets restored. Then the question of amending the law etc. does not arise and if the position remains the same, and the advice remains the same, then I would submit that a better course would be to exercise the discretion in giving options in a much more constrained fashion and to pitch the fine at such a level that the general duty factor is taken care of. If you resort to absolute confiscation in all those cases where the law provides this, it leads to a lot of problems like warehousing etc. Therefore, as I said in my opinion it would be better that even if we have to amend the law, I would rather say that the

be amended in this way that we shall not give low option but that will create some problems. Otherwise the law has to be amended to recover the duty from anybody in the case of confiscation. In the instance I have cited, the goods are worth Rs. 10,000 and they are notified goods. We are satisfied on the whole nothing. We impose a fine of Rs. 5 or 10 for the technical viotation. Then we enter into investigation and those investigations will lead us to prolonged proceedings in every single case even if it involves a minor infration of the law. I am not sure whether it would be an appropriate approach. Depending on the reconsidered opinion of the Law Ministry, there would be some kind of re-writing of the law."

Failure of department to approach next revisionary authority

1.105 The Committee desired to know why in the case under examination the order of the Appellate Collector was not reviewed by the Central Government under the powers of revision under Section 131 (3) of the Customs Act, 1962. The Ministry of Finance (Department of Revenue) in their note stated as follows :

"The order of the Appellate Collector was not reviewed by the Central Government under the powers of revision under Section 131 (3)., as no reference was made by the Collector of Customs and Central Excise, Jaipur, in the case to the Central Government on grounds that the redemption fine imposed by the appellate authority was low. Moroever, it may be stated that the question of imposition of redemption fine under Section 125 is in the nature of penal imposition on goods imported in violation of prohibitions and is it not intended as provision for recovery of customs duties not levied."

1.106 During evidence, the Chairman, Central Board of Excise and Customs stated :

"I cannot answer that.... in respect of this case I do not see why we should not have gone in for revision."

1.107 Asked whether any guidelines were issued to Collectors of Customs and Collectors of Central Excise in charge of minor ports

prescribing the types of cases and decisions of the Appellate Collectors which were to be referred to Government for review under Section 131, the Ministry of Finance (Department of Revenue) stated :

> "Instructions have been issued to the Collectors emphasising that considerable importance attaches to the exercise of powers of revision of Government and that as such the orders of Appellate Collectors under section 128 of the Customs Act (As it stood before the enforcement of the amendments made by the Finance Act, 1980) should invariably be scrutinised. All such cases which warrant review under section 131 (3) of the Customs Act should be referred to the Ministry promptly with all documents required for the purpose.
>
> These instructions were reiterated to the Collectors in November, 1979 as a result of certain observations of the P.A.C. made in para 1.23 of their 145th Report. The P.A.C. observed that even patently wrong decisions of the Appellate Collectors were being reviewed by the Central Government only when these were referred to them for review and that Government have no machinery to scrutinise the orders in appeal to a scertin whether in any of them merits review or not. Pursuant to these observations of the P.A.C., instructions were issued to all Collectors of Customs and Central Excise (including those in-charge of minor ports) providing for the following procedure :
>
> All appeal and revision application decisions shall on receipt be put up to officer whose orders have been confirmed, modified or set aside. Where the decision had been set aside (such as fine and penalty remmitted, refund allowed etc.) the decision in appeal/revision application will be examined from the point of view as to whether it calls for a change in the existing practice or procedure, whether the facts relied upon are acceptable and whether there is any difficulty in following the decision in other similar cases. If on such scrutiny it is decided to refer any such appeal order for review, a suitable intimation with instructions regarding implementation or otherwise of the decision in question will be immediately sent by the concerned Assistant Collector to the to the concerned formations. These instructions also lay down that a register

indicating the details of appellate/revisionery orders scrutinised be maintained.

Fresh instructions reiterating the earlier instructions were again issued by the Ministry in May, 1980."

Seizures of Smuggled Goods

1.108 At the instance of the Committee, the Ministry of Finance (Department of Revenue) have furnished the following details of the total number of seizures of smuggled goods effected by the Customs authorities and the value of goo ls seized as a result thereof during the period 1977 to 1982 (upto October) :

Table I

Year	Number of seizures	Value of goods seized (Rs. in crores)
1977	1,14,977	29.94
1978	1,04,431	30.94
1979	1,03,640	40.42
1980	1,16,735	52.84
1981	62,124	39.72
1982*	51,186	55.29

Upto Oct.,

(Figures for 1982 provisional)

1.109 The details of the total number of raids and searches conducted to unearth smuggled goods in towns and cities and the value of goods seized as a result thereof during the above period as intimated by the Ministry of Finance (Department of Revenue) are shown in Table II.

Table II

Year	Number of raids/searches.	Value of goods seized (Rs. in crores)
1977	32,768	3.80
1978	23,794	3.65
1979	31,476	6.48
1980	15,683	5.65
1981	18,974	8.47
1992*	16,753	10.99

(Upto October)

(Figures for 1982 provisional)

1.110 The percentage of town seizures and the value of goods so seized (Table II) to the total number of seizures and the value thereof (Table I) are shown in the following Table (III).

Table III

Year	Percentage of town seizures to total no. of seizures	Percentages of value of goods seized in town seizures to total seizure
1977	28	12.7
1978	22	11.8
1979	30.3	16
1980	13	10.7
1981	30.5	21.3
1982	32.7	19.9

1.111 The Committee were informed that the principal types of goods seized during the past five to six years were gold, wrist watches, synthetic fabrics, diamonds and precious stones and electronic goods. In a note furnishsed to the Committee on the analysis made by the Department with reference to the international *vis-a-vis* domestic price levels which encourage smuggling of such goods, the Ministry of Finance (Department of Revenue) stated :

"GOLD—Gold has traditionally been an item sensitive to being smuggled into the country. There has always been an incentive for smuggling gold into India due to higher price for the mental in the domestic market vis-a-vis the international price. It was only for a brief period between December, 1979 and November, 1980, that the unusual phenomenon of the international prices being higher than the domestic prices occurred. However, from December, 1980 todate there has been an increasingly attractive margin of profit for smuggling gold into the country due to a continuous fall in the international price of gold below the domestic price. In December, 1980, the average margin of profit for gold being smuggled into India was Rs 98 per 10 grammes (calculated at the Hawala rate of the U.S. $). This rose to Rs. 126 per 10 grammes in January 1981 and fluctuated in the region of Rs. 150-250 per 10 grammes till December, 1981. During January, 1982, the average margin of profit for gold smuggling into India was Rs. 302 per 10 grammes and stood at about Rs. 317 per 10 grammes in June, 1982.

SILVER—Until recently, there was always a margin of profit for silver to be smuggled out of India due to the higher price prevailing for the metal in the international market as compared to the domestic price. This trend was most pronounced during the period September, 1979 to December, 1980. During January, 1980, the margin of profit for smuggling silver out of India touched an all time high of Rs. 6,345 per kg. However, from January, 1981, the margin of profit for the out-smuggling of silver steadily decline due to the progressive fall in the international price of the metal. For the first time, in October, 1981, the average international price of silver fell below the domestic price by about Rs. 26/- per kg. This negative price difference further fell to Rs. 290/- in November, 1981, was (—) Rs. 866/- per kg. in June, 1982.

WRIST WATCHES—This is another item which has been found to be a favourite item smuggled into the country. The main cause of the continuous smuggling of watches into the country is the gap between the demand and supply. The demand has mainly been for watches of cheaper price. It is

estimated that the average price differential between the international and domestic price of watches of various kinds ranges between 50 per cent and 10 per cent which provides sufficient incentive for such smuggling.

SYNTHETIC FABRICS—This item smuggled in an organized way through sea routes as also through baggage of incoming passengers. The main incentive for such smuggling is the pride differential between the domestic and international markets and the quality of fabrics. The main source of supply of synthetic fabric is Japan and South Korea. While synthetic fabrics of Japanese origin are better in quality and cheaper, the synthetic fabrics of Korean origin are found to be of inferior quality. No estimate is avaiable of a margin of profit for smuggling synthetic fabrics into the country but it is sufficiently high to provide an incentive to smugglers.

DIAMONDS AND PRECIOUS STONES—As regards diamonds, a two-day trend of smuggling has been noticed. While rough and uncut diamonds are smuggled into the country, out and polished diamonds are smuggled out. This is because of the high quality of workmanship in diamonds obtaining in the country as also the low cost of labour in India.

ELECTRONIC GOODS—The type of electronic goods smuggled into the country are T.V. sets, cassette recorders, electronic components like integrated circuits. The price and quality factors of these items are the main cause of their smuggling into the country. Depending on the type of electronic goods, the margin of profit for smuggling into India varies from 100 per cent to 150 per cent."

1.112 The Committee pointed out that the number of seizures made during the years 1977 to 1982 have decreased considerably except for the year 1980. Similarly, the number of raids/searches conoucted during the same period have also declined except during the yeaar 1979. Asked whether the department had made any qualitative evaluation in order to assess the impact of the anti-smuggling measures on smuggling, the Ministry of Finance (Department of Revenue) in a noted stated :

"It may be seen from the above that from 1977 to 1979, the figure of number of seizures has remained more or less steady and during 1980 it increased marginally. However, from 1980 onwards, the figure has reduced almost by half.

The sudden drop in the figure of number of seizures since 1981 is explained by the fact that there was a change in the Baggage Rules from July, 1980. Upto July, 1980, there was an Import Trade Control restriction on the value of the goods which could have been imported by a passenger as part of baggage. Goods in excess of these limits were subject to adjudication and confiscation. Such cases of adjudications in baggage cases were also included in the figures of total number of seizures.

However, in July, 1980 the Baggage Rules were amended in terms of which a scale of Customs duty was imposed—the first Rs. 1,000 value of goods being duty free, the next slab of Rs. 2,000 attracting a rate of duty of 150% (now 155%) and any goods imported above this slab attracting duty at 320% (now 330%).

Hence from July, 1980, there were no adjudications of bagg age cases except where goods were attempted to be imported by concealment, misdeclaration etc. Thus, the number of baggage cases has drastically come down since July, 1980, and this explains the steep fall in the figure of number of seizures from 1981 onwards.

A clear picture of the impact of anti-smuggling measures can be arrived at if we examine the figures of seizures excluding baggage cases during the period 1977 to 1982 :

Year	Number of seizures excluding baggage cases	Value of goods seized (Rs. in crores)
1977	31,706	12.44
1978	21,131	13.92
1979	32,952	18.66
1980	29,999	30.20
1981	34,176	31.13
1982* (Upto October)	27,051	48.26

*Figures for 1982 provisional.

The above figures show that the number of seizures exculding baggage cases has gone up from 1981, and the value of the goods seized in such cases has also shown a steady increase since 1977.

1.113 The Ministry further stated :

"It is true that as compared to the years between 1977 and 1979, the figures of number of raids and searches for the subsequent years has considerably gone down. Over the last several years, it has been repeatedly impressed upon the field formations that while stepping up the tempo of raids and searches, it should be ensured that such action is based on a proper evaluation of intelligence and information so that the searches are fructuous and result oriented, and that no undue inconvenience or harassment is caused to the public. It may be seen from the above figures that during 1981 and 1982, there has been a considerable increase in the value of goods seized as a result of raids and searches as compared to the previous years even though the number of raids and searches have been proportionately lower. This is indication that the instructions issued to the field formations have had the desired effect."

1.114 It has further been stated by the Ministry :

"Presently, a plan of action is being executed to intensify the anti-smuggling drive. This plan of action, *inter alia*, calls for the strengthening of the preventive and intelligence machinery, intensification of the application of the provisions of COFEPOSA Act, 1974 and increased bilateral co-operation with neighbouring countries to combat smuggling between these countries and India.

The progress of implementation of this programme is being closely monitored by the Directorates of Revenue Intelligence and Preventive Operations who are furnishing monthly evaluation reports to the Ministry. The anti-smuggling measures are also being periodically reviewed at Conferences of Collectors of Customs held in various regions. These review meetings are also attended by representatives of the concerned State Governments (including police) and of other

enforcement agencies, such as income-tax Department, Directorate of Enforcement the Border Security Force and the Coast Guard Organisation to discuss co-ordination measures with a view to making appropriate recommendations in this regard to Government."

1.115 According to Section 111 of the Customs Act, 1962 goods imported without observing the statutory Requirements and prescribed procedure and without payment of customs duty are liable to confiscation Under Section 112, any person knowingly in possession of goods is liable to penalty upto five times the value of goods, if they are prohibited goods and upto five times the duty sought to be evaded if they are goods other than prohibited goods. As per Section 122, liability to confiscation and penalty is to be adjudicated. Under Section 125 of the Act, the Adjudicating Officer may, in the case of prohibited goods, and, shall in the case of other goods, give to the owner of the goods an option to pay in lieu of confiscation a fine as the said officer thinks fit, provided that such fine shall not exceed the market price of the goods confiscated less the customs duty chargeable thereon. In Section 125 (2) it is clarified that fine imposed in lieu of confiscation shall be, in addition to any duty and any charges payable in respect of such goods.

1.116 The Committee find that a 'Toyota' car was seized from one Shri Umed Mal Jain on 23 November, 1976 at Bilaspur, Rajasthan. The party could not give evidence of legal importation of the car and stated that he had purchased it in the year 1972 for a sum of Rs. 30,000 from Shri Bihari Lal Agarwal, of Calcutta through a broker Shri J.M. Verma of Bangalore. According to the evidence furnished by Shri Jain, the car was originally allotted to STC Calcutta, but subsequently sold to Shri Agarwal. However, it was found that records relating to the registration number allotted to the Toyota car were fabricated and the documents supporting the registration were forged. The Deputy Collector of Central Excise, Jaipur adjudicated the possession of the car as an offence under the Customs Act on 11 May, 1978 and confiscated the car absolutely. No personal penalty however was imposed on Shri Jain under Section 112 of the Customs Act, 1962 on the ground that there was no evidence to establish that he had knowledge that the car

was smuggled into India. There upon the party went in appeal and the Appellate Collector, New Delhi upheld the order of confiscation passed by the Deputy Collector. However, on 2 January, 1980 he ordered that the car be released on payment of a redemption fine of Rs. 25,000. The Appellate Collector did not order levy of either customs duty or penalty. According to the Audit, customs duty leviable on the car on regular import would have been Rs. 87,500.

1.117 The Committee are surprised to note that while there were various lines of investigations open before the Customs authorities to find out the persons actually associated with the illegal import and forging of the documents relating to the car, no serious efforts were made to trace and bring to book the guilty persons. No action was taken by the Department to launch criminal proceedings against the broker although admittedly, there was a *prima facie* case against him. The Committee consider that a thorough cross examination of the broker would have enabled the Department to locate Shri Bihari Lal (who was not found to be traceable) and there by more facts of the case could have been unearthed. Further, no efforts were made to find out the original purchaser from the manufacturers of the car. What is more distressing is that the Department did not make adequate use of their own intelligence cell, viz. the Directorate of Revenue Intelligence in this case. While admitting the need for investigating the case further, the Chairman, Central Board of Excise and Customs conceded in evidence that "with a little effort it should have been possible to find out more facts." It is distressing to note that the department took no action to enquire into the case thoroughly immediately on receipt of the Audit objection and the very necessity for such an investigation had, admittedly, to be realised only after the matter came up before the Committee. The Committee cannot but conclude that this is indicative of the casual approach of the authorities towards such serious offences like smuggling and forgery. The Committee recommend that a thorough investigation of the case should be undertaken by the Directorate of Revenue Intelligence so as to find out who was responsible for the illegal import of the car and for forging the

documents and the extent of collus on of the registering authorities, if any. The Committee would like to be apprised of the findings and the action taken thereon within a period of six months.

1.118 The Ministry of Finance have maintained that the non-levy of duty in the present case was in terms of the opinion given by the Ministry of Law in 1974 in an identical case. According to the instructions issued by the Central Board of Excise and Customs on 18 December, 1975 in accordance with the above advice, in town seizure cases, payment of duty cannot be demanded from a person other than the importer and the liability to duty was on the importer only. The Committee were informed that prior to issue of these instructions, duty was collected in town seizures irrespective of the identity of the actual importer. The Ministry of Law itself had given the opinion in 1971 that in cases of town seizures there will be a liability to pay customs duty, in addition to fine in lieu of confiscation. What is surprising is that the opinion given by the Ministry of Law in 1974 which was contradictory to their earlier views and had serious adverse revenue implications was approved at Joint Secretary level only. During evidence, the representative of the Ministry of Law admitted that this was a fit case where at least the Law Secretary should have been consulted. He was also candid in admitting that the opinion given by the Ministry of Law in 1974 in a way amounted to giving a premium to clandestine activities apart from loss of revenue to the exchequer.

1.119 What is equally amazing is the manner in which the reference was made by the Ministry of Finance to the Ministry of Law and how the fresh advice of the Ministry of Law was circulated as executive instructions overlooking the required procedural conventions. The Committee find that in a case identical to the one under examination, the possessor of the illegally imported car, Shri Ishar Singh Chawla, was asked by the Customs authorities to pay duty in addition to redemption fine. After exhausting other appellate remedies, the petitioner filed revision application before the Government of India. Keeping in view certain legal points raised by the party during the proceedings, the Under Secretary, Ministry of Finance who

was assisting the revisionary authority, viz. the Special Secretary, Ministry of Finance, made a reference to the Ministry of Law on 26 November, 1973 on his own. The Committee do not find any justification for the reference to the Ministry of Law at that point of time as an advice given by that Ministry less than a year back was already on record and the department had also issued instructions to that basis. What is still more surprising is, that the opinion of the Law Ministry which was contradictory to their own views expressed a year before, was accepted just at the level of Member (Customs) only and instructions were issued in pursuance thereof to the Collectorates. The Committee are astonished to note that such a vital issue which had a profound adverse impact on revenue and which in no uncertain terms gave a fillip to the smuggling activity, was not placed for the consideration either of the Central Board of Excise and Customs or of the Finance Secretary. This is deplorable to say the least. During evidence the Chairman, Central Board of Excise and Customs was candid enough to admit, "this case should have gone to a higher level and considered properly".

1.120 The Committee are strongly of the view that it should not be left to a member of the Board to set aside an order of the full Board particularly where such orders have adverse impact on revenue. The Committee desire that suitable instructions in this regard should be issued for compliance in future.

1.121 The facts stated in the foregoing paragraphs clearly indicate that the question of chargeability of Customs duty on goods seized in town seizures has not been adequately examined by the Ministry of Law On the face of it, the opinion given by the Ministry of Law in 1974 appears to be contrary to the general principle of law, i e., the obligation to tax has to be discharged by one who inherits the goods. It also goes counter to the very basic idea of charging customs duty viz. on goods which cross the frontiers of the country. The opinion of the Ministry of Law gives the impression that the Customs Act holding the field for so many years has a serious flaw, in that no revenue can be realised on illegal imports, where the actual importer cannot

be located. During evidence, the representative of the Ministry of Law however admi ted that there was no case law on the is ue under the Customs Act, 1962 and the advice was given on the basis of certain decisions under the Sea customs Act, 1878. According to him, "the opinion given in 1974 was by the then Joint Secretary who became Law Secretary. Now if the Committee would like to have a further opinion, we will do that." The Chairman, Central Board of Excise and Customs also admitted the imperative need for getting the issue reconsidered by the Ministry of Law. The Committee recommend that the Ministry of Finance should, in consultation with the Ministry of Law reconsider the issue and take appropriate corrective measures in order to protect reveuue as also to check illegal imports. The Committee would like to be apprised of the conclusive action taken in the matter within a period of six months.

1.122 In this context, the Committee find that the value of goods seized in town raids and seizures has shown an increasing trend during the last five years. From the figures furnished by the Ministry of Finance it is seen that the total value of goods seized by the Customs Department since 1977 was. Rs. 29·94 crores in 1977, Rs. 30.94 crores in 1978, Rs. 40.42 crores in 1979, Rs. 52.84 crores in 1980, Rs. 3972 crores in 1981 and Rs.55.29 crores in 1982 (upto October). Out of these, the value of goods seized in town seizures amounted to Rs. 3.80 crores in 1977, Rs. 3.65 crores in 1978 Rs. 6.48 crores in 1979, Rs. 5.65 crores in 1980, Rs. 8.47 crores in 1981 and Rs. 10.99 crores in 1982 (upto October) Thus, the town seizures were quite substantial. Pertinently, after the issue of instructions in 1975 consequent upon the advice given by the Ministry of Law, no duty was to be charged in case the actual importers were unidentifiable. Thus the amount of duty collected/foregone in town seizures would be anybody's guess. The Ministry of Finance have expressed their inability to indicate tne amount of duty foregone since ihe issue of 1975 instructions as the Collectors have reported that it was difficult to arrive at any estimate. The Committee cannot but conclude that revenue losses on this score are attributable to the laxity on the part of the Ministry of Finance for the reasons that even if the opinion given by the Ministry of Law was found to be correct it was the responsibility of the Ministry of Finance to rectify the

lacuna by proposing amendment of the law. In this connection, the Committee note the statement made, by the representative of the Ministry of Law that, "by amendment of law" it was possible to rectify the situation, "but it has not been suggested", because "we have not been asked". The Committee trust that the assurance given by the Chairman, Central Board of Excise and Customs during evidence that "depending on the reconsidered opinion of the Law Ministry, there would be some kind of rewriting of the law" would be fulfilled. The Committee would like to be apprised within six months of the follow-up action taken in this regard.

1.123 The Committee regret to note that in the case under examination the party was allowed the option to redeem the car in lieu of confiscation upon payment of redemption fine though it was not obligatory on the part of the adjudicating officer under the Act to offer the option for a prohibited item of import like car. Distressingly, the fine so imposed was a meagre amount of Rs. 25,000 only while on regular imports, the customs duty leviable itself would have amounted to Rs. 87,500, Admitting that "the fine should have been higher" the Chairman, Central Board of Excise and Customs stated in evidence that, "in respect of this case I do not see why we should not have gone in for revision". According to him, for many decades, at least from 1930 onwards the practice in the department was to fix redemption fine at such a level as would cover at least the amount of duty. The Committee would like the Central Board of Excise and Customs to examine the case in depth to find out the circumstances in which appeal against the decision of the Appellate Collector was not filed and why the Board failed in invoking the powers of *suo motu* revision or review and also take suitable measures to safeguard against such lapses in future.

1.124 The apprehension of the Committee that the redemption fine in cases of town seizures is being fixed without taking into consideration the element of duty after the advice of the Ministry of Law in 1974 is reinforced on the perusal of various cases of adjudications pointed out by Audit. The Committee found that the fines imposed for release of such items were grossly inadequate (e.g. watches, calculators etc. valuing Rs. 4,075

released on a fine of Rs. 50 only, tapes valuing Rs. 2,000 released on a fine of Rs. 100 only and so on). At the instance of the committee, a list of adjudications in town seizure cases where the seized goods were released on redemption fine pertaining to Customs/Central Excise Collectorates of Ahmedabad, Calcutta, Shillong and Delhi were sent by Audit to the Ministry of Finance for verifying whether the element of duty was covered in the redemption fine imposed while releasing those articles. The Ministry of Finance admitted that in the majority of the adjudications the amount of redemption fine fixed was quite low and the amount of duty had not been safeguarded. Commenting on these startling revelations, the Chairman, Central Board of Excis and Customs observed during evidence "These are cases which would cause us serious concern". The Committee wonder how this state of affairs was allowed to continue for so long. The Committee cannot remain contented with the assurance given by the Ministry of Finance the lists of adjudications have been forwarded to the respective Collectors concerned to examine them and issue general instructions. The Committee feel that there is an urgent need to clarify the precise legal position to the field formations in respect of confiscation of goods and their release in lieu of redemption fine. The Central Board of Excise and Customs should immediately issue instructions directing the adjudicating officers to resort to absolute confiscation of prohibited goods save in exceptional cases. Further in all cases where redemption fine is imposed it should be fixed at such a level that the duty factor is taken care of.

NEW DELHI ;
April 27, 1983
Vaisakha 7, 1905 (S)

SATISH AGARWAL
Chairman
Public Accounts Committee

APPENDIX

Statement of Conclusions and Recommendations

S. No.	Para No.	Ministry concerned	Recommendations and Conclusions
1	2	3	4
1	1.115	Ministry of Finance (Deptt. of Revenue)	According to Section 111 of the Customs Act, 1962 goods imported without observing the statutory Requirements and prescribed procedure and without payment of customs duty are liable to confiscation. Under Section 112, any person knowingly in possession of goods is liable to penalty upto five times the value of goods, if they are prohibited goods and upto five times the duty sought to be evaded if they are goods other than prohibited goods. As per Section 122, liability to confiscation and penalty is to be adjudicated. Under Section 125 of the Act, the adjudicating Officer may, in the case of prohibited goods, and, shall in the case of other goods, give to the owner of the goods an option to pay in lieu of confiscation a fine as the said officer thinks fit, provided that such fine shall not exceed the market price of the goods confiscated less the customs duty chargeable thereon. In Section 125 (2) it is clarified that fine imposed in lieu of confiscation shall be, in addition to any duty and any charges payable in respect of such goods.
2	1.116	—do—	The Committee find that a 'Toyota' car was seized from one Shri Umaid Mal Jain on 23 November, 1976 at Bilaspur, Rajasthan. The party could not give evidence of legal importation of the car and stated that he had purchased

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			it in the year 1972 for a sum of Rs. 30,000 from Shri Bihari Lal Agarwal, of Calcutta through a broker Shri J.M. Verma of Bangalore. According to the evidence furnished by Shri Jain, the car was originially allotted to STC Calcutta, but subsequently sold to Shri Agarwal. However, it was found that records relating to the registration number allotted to the Toyota car were fabricated and the documents supporting the registration were forged. The Deputy Collector of Central Excise, Jaipur adjudicated the possession of the car as an offence under the Customs Act on 11 May 1978 and confiscated the car absolutely. No penalty however was imposed on Shri Jain under Section 112 of the Customs Act, 1962 on the ground that there was no evidence to establish that he had knowledge that the car was smuggled into India. Thereupon the party went in appeal and the Appellate Collector, New Delhi upheld the order of confiscation passed by the Deputy Collector. However, on 2 January, 1980 he ordered that the car be released on payment of redemption fine of Rs. 25,000. The Appellate Collector did not order levy of either customs duty or penalty. According to the Audit, customs duty leviable on the car on regular import would have been Rs. 87, 500.
3	1.117	—do—	The Committee are surprised to note that while there were various lines of investigations open before the Customs authorities to find out the persons actually associated with the illegal import and forging of the documents relating to the car, no serious efforts were made to trace and bring to book the guilty persons. No action was

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			taken by the Department to launch criminal proceedings against the broker although admittedly, there was a *prima facie* case against him. The Committee consider that a thorough cross examination of the broker, would have enabled the Department to locate Shri Bihari Lal (who was not found to be traceable) and thereby more facts of the case could have been unearthed. Further, no efforts were made to find out the original purchaser from the manufacturers of the car. What is more distressing is that the Department did not make adequate use of their own intelligence cell, viz. the Directorate of Revenue Intelligence in this case. While admitting the need for investigating the case further, the Chairman, Central Board of Excise and Customs conceded in evidence that "with a little effort it should have been possible to find out more facts." It is distressing to note that the department took no action to enquire into the case thoroughly immediately on receipt of the Audit objection and the very necessity for such an investigation had, admittedly, to be realised only after the matter came up before the Committee. The Committee cannot but conclude that this is indicative of the casual approach of the authorities towards such serious offences like smuggling and forgery. The Committee recommend that a thorough investigation of the case should be undertaken by the Directorate of Revenue Intelligence so as to find out who was responsible for the illegal import of the car and for forging the document and the extent of collusion of the registering authorities, if any. The Committee would like to be apprised of the findings and the action taken thereon within a period of six months.

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4	1.118	Ministry of Finance (Deptt. of Revenue) Ministry of Law	The Ministry of Finance have maintained that the non-levy of duty in the present case was in terms of the opinion given by the Ministry of Law in 1974 in an identical case. According to the instructions issued by the Central Board of Excise and Customs on 18 December, 1975 in accordance with the above advice, in town seizure cases, payment of duty cannot be demaned from a person other than the importer and the liability to duty was on the importer only. The Committe were informed that prior to issue of these instructions, duty was collected in town seizures irrespective of the identity of the actual importer. The Ministry of Law itself had given the opinion in the 1972 that in cases of town seizures there will be a liablility to pay customs duty, in addition to fine in lieu of confiscation. What is surprising is that the opinion given by the Ministry of Law in 1974 which was contradictory to their earlier views and had serious adverse revenue implications was approved at Joint Secretary level only. During evidence, the representative of the Ministry of Law admitted that this was a fit case where at least the Law Secretary should have been consulted. He was also candid in admitting that the opinion given by the Ministry of Law in 1974 in a way amounted to giving a premium to clandestine activities apart from loss of revenue to the exchequer.
5	1.119	Ministry of Finance (Department of Revenue)	What is equally amazing is the manner in which the reference was made by the Ministry of Finance to the Ministry of Law and how the fresh advice of the Ministry of Law was circulated as executive instructions overlooking the required procedural conventions. The Committee find

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that in a case identical to the one under examination, the possessor of the illegally imported car, Shri Ishar Singh Chawla, was asked by the Customs authorities to pay duty in addition to redemption fine. After exhausing other appellate remedies, the petitioner filed revision application before the Government of India. Keeping in view certain legal points raised by the party during the proceedings the Under Secretary, Ministry of Finance who was assisting the revisionary authority, viz. the Special Secretary, Ministry of Finance, made a reference to the Ministry of Law on 26 November, 1973 on his own. The Committee do not find any justification for the reference to the Ministry of Law at that point of time as an advice given by that Ministry less than a year back was already on record and the department had also issued instructions to that basis. What is still more surprising is, that the opinion of the Law Ministry which was contradictory to their own views expressed a year before, was accepted just at the level of Member (Customs) only and instructions were issued in pursuance thereof to the Collectorates. The Committee are astonished to note that such a vital issue which had a profound adverse impact on revenue and which in no uncertain terms gave a fillip to the smuggling activity, was not placed for the consideration either of the Central Board of Excise and Customs or of the Finance Secretary. This is deplorable to say the least. During evidence the Chairman, Central Board of Excise and Customs was candid enough to admit, "this case should have gone to a higher level and considered properly."

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6	1.120	—do—	The Committee are strongly of the view that it should not be left to a Member of the Board to set aside an order of the full Board particularly where such orders have adverse impact on revenue. The Committee desire that suitable instructions in this regard should be issued for compliance in future.
7	1.121	Ministry of Finance (Department of Revenue) Ministry of Law	The facts stated in the foregoing paragraphs clearly indicate that the question of chargeability of Customs duty on goods seized in town seizures has not been adequately examined by the Ministry of Law. On the face of it, the opinion given by the Ministry of Law in 1974 appears to be contray to the general principle of law, i.e., the obligation to tax has to be dischared by one who inherits the goods. It also goes counter to the very basic idea of charging customs duty viz. on goods which cross the frontiers of the country. The opinion of the Ministry of law gives the impression that the Customs Act holding the field for so many years has a serious flaw, in that no revenue can be realised on illegal imports, where the actual importer cannot be located. During evidence, the representative of the Ministry of Law however admitted that there was no case law on the issue under the Customs Act, 1962 and the advice was given on the basis of certain decisions under the Sea Customs Act, 1878. According to him, "the opinion given in 1974 was by the then Joint Secretary who became Law Secretary. Now if the Committee would like to have a further opinion, we will do that." The Chairman, Central Board of Excise and Customs also admitted the imperative need for getting the issue reconsidered by the Ministry of Law. The Committee recommend

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			that the Ministry of Finance should, in consultion with the Ministry of Law reconsider the issue and take appropriate corrective measures in order to protect revenue as also to check illegal imports. The Committee would like to be apprised of the conclusive action taken in the matter within a period of six months.
8	1.122	Ministry of Finance (Department of Revenue)	In this context, the Committee find that the value of goods seized in town raids and seizures has shown an increasing trend during the last five years. From the figures furnished by the Ministry of Finance it is seen that the total value of goods seized by the Customs Department since 1977 was—Rs. 29.94 crores in 1977, Rs. 30.94 crores in 1978, Rs. 40.42 crores in 1979, Rs. 52.84 crores in 1980, Rs. 39.72 crores in 1981 and Rs. 55.29 crores in 1982 (upto October). Out of these, the value of goods seized in town seizures amounted to Rs. 3.80 crores in 1977, Rs. 3.65 crores in 1978, Rs. 6.48 crores in 1979, Rs. 5.65 crores in 1980, Rs. 8.47 crores in 1981 and Rs. 10.99 crores in 1982 (upto October). Thus the town seizures were quite substantial. Pertinently, after the issue of instructions in 1975 consequent upon the advice given by the Ministry of Law, no duty was to be charged in case the actual importers were unidentifiable. Thus the amount of duty collected/foregone in town seizures would be anybody's guess. The Ministry of Finance have expressed their inability to indicate the amount of duty foregone since the issue of 1975 instructions as the Collectors have reported that it was difficult to arrive at any estimate. The Committee cannot but conclude that revenue losses on this score are attributable to the laxity on the part of the Ministry of

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			Finance for the reasons that even if the opinion given by the Ministry of Law was found to be correct, it was the responsibility of the Ministry of Finance to rectify the lacuna by proposing amendment of the law. In this connection, the Committee note the statement made by the representative of the Ministry of Law that, "by amendment of law" it was possible to rectify the situation, "but it has not been suggested", because "we have not been asked". The Committee trust that the assurance given by the Chairman, Central Board of Excise and Customs during evidence that "depending on the reconsidered opinion of the Law Ministry, there would be some kind of re-writing of the law" would be fulfilled. The Committee would like to be apprised within six months of the follow-up action taken in this regard.
9	1.123	—do—	The Committee regret to note that in the case under examination the party was allowed the option to redeem the car in lieu of confiscation upon payment of redemption fine though it was not obligatory on the part of the adjudicating officer under the Act to offer the option for a prohibited item of import like car. Distressingly, the fine so imposed was a meagre amount of Rs. 25,000 only while on regular imports, the customs duty leviable itself would have amounted to Rs. 87,500. Admitting that "the fine should have been higher" the Chairman, Central Board of Excise and Customs stated in evidence that, "in respect of this case I do not see why we should not have gone in for revision". According to him, for many decades, at least from 1930 onwards the practice in the department was to fix redemption fine at such a level as would cover

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			at least the amount of duty. The Committee would like the Central Board of Excise and Customs to examine the case, in depth to find out the circumstances in which appeal against the decision of the Appellate Collector was not filed and why the Board failed in invoking the powers of *suo motu* revision or review and also take suitable measures to safeguard against such lapses in future.
10	1.124	—do—	The apprehension of the Committee that the redemption fine in cases of town seizures is being fixed without taking into consideration the element of duty after the advice of the Ministry of law in 1974 is reinforced on the perusal of various cases of adjudications pointed out by Audit. The Committee found that the fines imposed for release of such items were grossly inadequate (e.g. watches, calculators etc. valuing Rs. 4,075 released on a fine of Rs. 50 only, tapes valuing Rs. 2,000 released on a fine of Rs. 100 only and so on). At the instance of the Committee a list of adjudications in town seizure cases where the seized goods were released on redemption fine pertaining to Customs/Central Excise Collectorates of Ahmedabad, Calcutta, Shillong and Delhi were sent by Audit to the Ministry of Finance for verifying whether the element of duty was covered in the redemption fine imposed while releasing those articles. The Ministry of Finance admitted that in the majority of the adjudications the amount of redemption fine fixed was quite low and the amount of duty had not been safeguarded. Commenting on these startling revelations, the Chairman, Central Board of Excise and Customs observed during evidence "These are cases which

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			would cause us serious concern". The Committee wonder how this state of affairs was allowed to continue for so long. The Committee cannot remain contented with the assurancc given by the Ministry of Finance that the lists of adjudications have been forwarded to the respective Collectors concerned to exmine them and issue general instructions. The Committee feel that there is an urgent need to clarify the precise legal position to the field formations in respect of confiscation of goods and their release in lieu of redemption fine. The Central Board of Excise and Customs should immediately issue instructions directing the adjudicating officers to resort to absolute confiscation of prohibited goods save in exceptional cases. Further, in all cases where redemption fine is imposed it should be fixed at such a level that the duty factor is taken care of.

20. Atma Ram & Sons.
Kashmere Gate.
21. J. M. Jaina & Brothers,
Mori Gate,
Delhi.
22. The English Book Store,
7-L, Connaught Circus,
New Delhi-6
23. Bahree Brothers,
188, Lajpatrai Market,
Delhi-6
24. Oxford Book & Stationery
Company, Scindia House,
Connaught Place,
New Delhi-1
25. Bookwell,
4, Sant Nirankari Colony,
Kingsway Camp,
Delhi-9
26. The Central News Agency,
23/90, Connaught Place,
New Delhi.
27. M/s. D. K. Book Organisations,
74-D, Anand Nagar (Inder Lok)
P. B. No. 2141
Delhi-110035.
28. M/s. Rajendra Book Agency.
IV-D/50 Lajpat Nagar,
Old Double Story,
Delhi-110024.
29. M/s. Ashoka Book Agency.
2/27, Roop Nagar,
Delhi.
30. Books India Corporation,
B-997, Shastri Nagar,
New Delhi,

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